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EVIDENCE RECORDED IN INDIA.

Minutes of the Evidence given before the Indian States Committee at the Council Chamber, Metcalfe House.

Monday, the 13th February 1928, at 11 a.m.

PRESENT

Sir HARCOURT BUTLER, G.C.I.E., K.C.S.I., *Chairman*
Colonel the Honourable SIDNEY PEEL, D.S.O., } *Members*
Professor W. S. HOLDSWORTH, K.C., }

Lieutenant-Colonel G. D. OGILVIE, C.I.E., *Secretary*

The Honourable Mr. C. C. WATSON, C.S.I., C.I.E., Political Secretary to the Government of India

CHAIRMAN (*addressing Mr. Watson*).—I must thank you on behalf of the Committee for the clear, concise and valuable expressions of opinion already sent by you to the Committee (*vide* Appendices). Perhaps the best thing would be to follow the order in which those opinions have been put forward. The first question is the discussion of matters of joint interest to British India and the States (Appendix A).

Your opinion has been asked on separate economic and fiscal questions in issue between British India and the Indian States. All such questions raise the general question whether it is not desirable to have some regular and formal system of joint discussion between representatives of the States and representatives of the Government of India on matters of common interest at
is reached. Have you any suggestions
discussion and the machinery necessary

POLITICAL SECRETARY.—I recorded m
the assumption that the Princes are not prepared to give up any of their internal sovereignty in order to enter into formal relations with British India. I have, however, recently heard from Sir Leslie Scott that the Princes are likely to change their previous attitude on this point, and, that being so, I would like to reserve my opinion. As I understand the position at present, the Princes, while not prepared to enter into relations with the Assembly or the Councils or other representative bodies, which covers the case of Local Governments, are inclined to consider favourably joint consultation higher up, namely, between themselves and the Executive Council. Should this for any reason prove impossible, I am of opinion that the suggestion in my written statement would probably be the best practicable solution.

CHAIRMAN.—Is it correct to say that the Chamber of Princes has not realised the expectations formed of it, and if not, why not?

POLITICAL SECRETARY.—Does that question refer to the expectations of the Princes or the expectations of those who brought the Chamber into being, viz. the Government of India?

CHAIRMAN.—The Government of India.

POLITICAL SECRETARY.—Then I should say that it does not come up to those expectations, nor does it do so from the point of view of the Princes. I think that the reasons for the disappointment largely lie in their own hands. Among them are the dislike of real d
which has made their opinions as recorded in the Chamber no tr
indication of the views that are held behind the scenes. I h

discussed the matter with many of the Princes, and they have told me that all the real debates take place outside the Chamber. They go into the Chamber to record formal decisions, which are the decisions of the majority at the informal discussions. The debates in the Chamber lose a great deal of the life and reality which they would otherwise have, because the Princes in the minority will not debate openly, and to that extent the debates do not really reflect the true opinion of the Princes. I think that is one reason, and it is as much to that as to any sterilisation of the agenda by the Political Department that the lack of interest in the debates is due. There may have been some subjects kept back from discussion as being inconvenient. But I think that the withering effect of such action by the Political Department has been exaggerated. There has in the past been a tendency to disallow discussions on any subject where the Government of India were not prepared to agree to what they thought would be the probable decision of the Princes. It has now been suggested by the Princes that the Government of India should allow discussion on the understanding that they would be free to turn down recommendations to which they cannot agree; and that they should not stifle discussion on a subject in the Chamber if the Princes wish to bring it forward, unless it is a matter which it is against the public interest to discuss openly. One illustration of this was given to me by the Maharaja of Bikaner, where a resolution of his with regard to Imperial Service troops was disallowed. The illustration was not a ... the resolution being ... of internal defence, ... discussion. On the other hand, I think that the Chamber of Princes has secured for the Princes much that they would not otherwise have obtained from the Government of India, owing to their joint action and joint recommendations on many subjects. ... we have to remember that the ... that they have obtained, and m... ment, to get more than by appearing to be satisfied. From the point of view of the framers of the scheme I should say that if the Chamber has been disappointing, it has been owing to its failure to tackle in an authoritative way questions relating to necessary reforms and improvements in the States themselves. The Princes have concentrated rather on obtaining advantages for themselves than on looking into their own weaknesses. This was perhaps natural.

CHAIRMAN.—Can you suggest any changes in the constitutional powers or practical working of the Chamber of Princes?

... view that the Chamber of ... making recommendations if ... individual members held th... er, and if they accepted the majority vote. This, of course, would mean a complete change in the constitution.

CHAIRMAN.—The next opinion which you have sent us in writing is on the constitutional question whether the States are in relation with the British Crown through the Governor-General or through the Governor-General in Council (Appendix B).

POLITICAL SECRETARY.—There seems to be very little doubt that at present they are under the Governor-General in Council. Sir Leslie Scott takes that view, and the Legislative Department of the Government of India also take that view.

CHAIRMAN.—And you take that view?

POLITICAL SECRETARY.—Yes.

CHAIRMAN.—The main questions that affect the future are:—

(1) Could the Indian States be transferred from the Crown to a Dominion Government in India without their consent?

(2) Contingent on the establishment of Dominion Government, should the States remain under the Governor-General in Council or should they by legislation be placed directly under the Governor General or Viceroy?

POLITICAL SECRETARY.—This is really a question for a lawyer, but the weight of opinion seems to be that they could be. Apart from the merits of the case, legally there seems nothing to prevent Parliament from handing its control over the Indian States to anybody it pleases, including a Dominion Government.

CHAIRMAN.—On the equity of the case, your opinion is that it would not be right?

POLITICAL SECRETARY.—I hold that opinion very strongly. The question is one of such importance that it should be considered now independently of the date when a Dominion Government may be established. It is also important in my opinion that we should examine *now whether, in view of possible impending changes in the executive* Government of India, the control of the States should not be taken away from the Governor-General in Council and be vested in the Governor-General only.

CHAIRMAN.—Such a change would probably necessitate a separate political budget in which all receipts from whatever source would be entered and to which all expenses of whatever kind would be charged. It is difficult to go into it, as we have not got figures to show what sort of budget it would be.

POLITICAL SECRETARY.—If the States were to obtain a share in the Imperial customs under any Zollverein arrangement, it might work out to perhaps one-fifth of the whole, i.e. about nine crores. If you have to compensate them to the extent of four and a half crores for the loss of their internal customs, the remaining four and a half crores might be regarded along with the Indian States Forces as more than covering their contribution to the defence of India and as giving them a right to the use of the Indian Army in times of internal insecurity. Any excess would be available for distribution among the States and would help them to improve their administration.

CHAIRMAN.—Has any case arisen in practice in which the Paramount *Power has been asked to support a Ruler against a demand of his* subjects for a change in the methods of the State Government? (See Appendix C.)

POLITICAL SECRETARY.—No such case has occurred.

CHAIRMAN.—Nor, so far as you are able to foresee in the future, will any such case occur?

POLITICAL SECRETARY.—No, I do not think so.

CHAIRMAN.—On the question of the relationship between the Paramount Power and the States you say (see Appendix D) that an attempt to define or codify comprehensively is open to objection; that a complete list of the practical restraints on their powers will be unpalatable to the Princes. If, however, the ultimate powers of the Paramountcy are reserved, it is possible to define the extent and methods of its exercise in specific instances, e.g. in dealing with Railways, Telegraphs, Posts, &c. Also the growing improvements in the administration of the States and increasing realisation of all-India /

requirements on the part of the Rulers, which cannot be secured by negotiation and co-operation which previously required cession of rights of jurisdiction.

Would you like to add anything to that statement?

POLITICAL SECRETARY.—I do not think I have much to add. It seems to me it is desirable to refrain from attempting to define Paramountcy. No definition can be comprehensive.

Professor HOLDSWORTH.—No codification can be final. You cannot foresee the future. You can only codify past practice to a certain extent. As occasions arise you have to make new laws to meet new difficulties.

CHAIRMAN.—Suggestions had been made from time to time to draw lines between the different classes of States as recommended in the Montagu-Chelmsford Report. It has been stated that such lines have not been drawn. This, however, is not correct. Lines have been drawn so as to arrange the Princes and Chiefs into three groups:—

Class of State or Estate, &c	No	Total Area (in square miles)	Population.	Revenue (in crores of rupees)
I. Princes who have a seat in the Chamber of Princes in their own right	108	514,886	59,847,186	42·16
II. Chiefs who are represented in the Chamber of Princes	127	76,846	8,004,114	2·89
III. Estate Holders, Jagirdars and others.	327	6,406	801,674	·74

Do the Government of India consider that the enquiry of the Indian States Committee may be confined to class I or to class I *plus* class II, and, if so, would you advise any alteration of classification from that at present adopted?

POLITICAL SECRETARY.—I would not recommend any alteration in classification adopted. In my view, the Committee ought to take the first two groups into consideration, and not only the States that are Members of the Chamber in their own right. Any constitution that is evolved for the States as distinct from British India, must include class II. Class II represents a considerable area and exercises jurisdiction of a very real kind. On grounds of convenience it might be desirable to eliminate class III when once you have got a definite constitutional line between British India and Indian States and a constitution worked out for each portion of India, but I do not think that you can eliminate class II and confine your suggestions to class I only. Class II has by practice and usage been included in the promises of protection and the guarantees extended to the Indian Rulers by the British Government during the past 100 years. Some of the larger States would be ready to see their lesser brethren deprived of their jurisdiction and merged in British India in the belief that they would be stronger without them. But it would be a dangerous doctrine for them also to admit that guarantees and promises must give way to political expediency. Except in degree there seems little difference between the position of the greater and the lesser States if usage and practice are taken into account. If we are to keep faith with any we should keep faith with all.

CHAIRMAN.—Do you consider that the second group of 127 Chiefs is sufficiently represented in the Chamber by 12 members?
POLITICAL SECRETARY.—Yes.

CHAIRMAN.—What are your views as to the future of class III?
POLITICAL SECRETARY.—You could put them under joint officials and magistrates, as is done in Kathiawar, or you could incorporate them in British India. The difficulty in Kathiawar is that the numerous estates are mixed up with State territory. If they were near British India it would be easier to incorporate them therein, and that might be the solution in Mahi Kantha and Rewa Kantha. But this method might lay us open to the charge of a breach of faith, for all these petty estates, for what they are worth, have been treated as Indian State territory for the last century. It would probably be better to keep them as such rather than incorporate them in British India.
In many cases, certainly in Kathiawar, the ideal solution would be for them to go back to their parent States, but in this there are also considerable difficulties. The present system as worked in Kathiawar is fairly satisfactory and I see no reason why it should not be continued.

CHAIRMAN.—Is it correct to say that modern political practice may be regarded as having its origin in the pronouncements of Lord Canning after the Crown had assumed direct and complete responsibility for the government of India, in the place of the Honourable East India Company?
POLITICAL SECRETARY.—Yes, undoubtedly.

CHAIRMAN.—Is it correct to say that in the exercise of its direct and complete responsibility for the government of India the Crown, acting through the Government of India, intervened in the internal affairs of the Indian States more frequently and continuously down to the period of Lord Minto's Viceroyalty?
POLITICAL SECRETARY.—Lord Curzon was the first Viceroy definitely to state the view that the only justification for rule is good rule and to impress it on the States as their guiding principle. In pursuance of this practice he undoubtedly did interfere directly and positively and authoritatively in the States. Lord Curzon's increased intervention and interference may also be ascribed in large measure to the fact that his Viceroyalty coincided with the greatest famine in modern times, when many States became bankrupt, millions of people died, and it was necessary to take drastic measures to strengthen the States administration which had failed to cope with the situation. I was in Rajputana myself at the time and I can remember how all the States had to come to Government for loans. As a condition on which loans were given the States were required to submit budgets for approval and sanction. It was all very drastic, all very new, and all very complete and comprehensive. It scared the States out of their lives. The conditions were special, you had a great famine, you had financial breakdown in many States, you had a complete failure of their administrative machinery. But when Lord Minto came the pendulum swung back and he initiated the present policy.

CHAIRMAN.—Is it correct to say that Lord Minto's Viceroyalty marked a change in the attitude of the Paramount Power towards the Indian States and a greater regard for their internal autonomy?
POLITICAL SECRETARY.—Yes, certainly.

CHAIRMAN.—Is it correct to say that the establishment of the Chamber of Princes inaugurated a policy of association and closer

co-operation among the Princes themselves and between them as a body and the Paramount Power?

POLITICAL SECRETARY.—Yes, certainly.

CHAIRMAN.—Is it correct to say that, apart from express and specific conditions in treaties or engagements made with individual States, political practice is uniform throughout each of these classes?

POLITICAL SECRETARY.—Yes, in my view it is. It is only when a State quotes a special clause in its treaty that we have to find arguments to deal with it; otherwise we deal with them on the same principle.

Professor HOLDSWORTH.—Would it be true to say that political usage and practice has affected the provision of treaties or has it only supplemented them?

POLITICAL SECRETARY.—Both affected and supplemented.

CHAIRMAN.—Is it correct to say that a distinct movement towards the codification of political practice has been made in recent years by discussion with the Princes falling under Class (a) and the issue of resolutions as the result of such discussion?

POLITICAL SECRETARY.—Yes

CHAIRMAN.—In how many cases has the Government of India [illegible]

such cases any general principles of intervention?

POLITICAL SECRETARY.—A statement will be supplied later on (see Appendix F).

CHAIRMAN.—Do you consider that the existing machinery of the Political Department is sufficient to bring to the notice of the Paramount Power all cases of misrule which may require intervention?

POLITICAL SECRETARY.—Yes

CHAIRMAN.—Do you consider that the Indian States falling under Class I have any claim for relief in regard to their contributions, direct or indirect, to the Government of India?

POLITICAL SECRETARY.—Yes. I have dealt with one aspect of this case in my note on Customs, and also on Posts and Telegraphs and Currency (*vide* Appendices H, K and M).

Tuesday, 14th February 1928.

PRESENT:

Sir HARCOURT BUTLER, G.C.I.E., K.C.S.I., *Chairman*

Colonel the Honourable SIDNEY PEEL, D.S.O. } *Members*
Professor W. S. HOLDSWORTH, K.C. }

Lieutenant-Colonel G. D. OGILVIE, C.I.E., *Secretary*

Sir AUSTEN HADOW, Kt., C.V.O., Chief Commissioner of Railways }
The Honourable Mr. H. G. HAIG, C.I.E., Secretary to the Government of India, Home Department } *Witnesses.*
The Honourable Mr. C. C. WATSON, C.S.I., C.I.E., Political Secretary. }

CHAIRMAN.—As regards the railway question (see Appendix G), I take it that there is agreement on the main point between the Political Department, the Railway Department and the Home Department?

That is to say, that in regard to the construction of a new railway line, the general lines of the policy of the Government of India are laid down in the Foreign and Political Department, Resolution No. 201 I., dated 6th December 1923, and that the policy that has been adopted commends itself to the various departments of the Government of India and the Indian States. Is that correct?

MR WATSON.—Yes, I think so. (Sir Austen Hadow and Mr. Haig assented.)

CHAIRMAN.—*Have the reciprocal arrangements recently made for obtaining land required for railways in Indian States been accepted as satisfactory all round?*

SIR AUSTEN HADOW.—To the best of my belief they have been accepted.

CHAIRMAN.—In fact, the only question about railways on which there is any real difference of opinion is the question of jurisdiction?

MR WATSON.—That is so.

CHAIRMAN.—The most important aspect of this question is the suggestion that where there is as much as 80 miles of continuous railway line in one State the jurisdiction over that particular portion *might be retroceded to the State.* This proposal was resisted by the Home Department, and Mr Watson is, on the whole, I understand, inclined to agree that the proposed experiment of retrocession, either over an 80-mile length of line or, as the Princes now suggest, over a 50-mile length of line, had better be dropped. I take it that if the Home Department and the Political Department agree on that point, *the Railway Department would fall in with them?*

SIR AUSTEN HADOW.—Our attitude has been, I think, that we first agreed to meet the wishes of the Durbars on this point to the extent of making an experiment of retrocession on one or two lengths of 80 miles, but found on examination that the cases, where there is a continuous length of 80 miles, or even rather less, in one State, are so few that such *an experiment would not lead us anywhere. Moreover, we agreed* rather against our conscience, and we would willingly accept the views of the Home and Political Departments on this point, because of the great difficulties that the proposal, if adopted, would give rise to.

CHAIRMAN.—What are those difficulties?

SIR AUSTEN HADOW.—The difficulty of dealing with claims for damages that arise in the course of the carriage of commodities by rail over a line where there are breaks of jurisdiction; the difficulties, which Mr. Haig can *explain better than I can, regarding the* administration of the criminal law on the railways, and the general feeling that relations might become very difficult at stations between State officials and the railway employees. These are the main points.

CHAIRMAN.—They might be summed up as the convenience and safety of the public and of trade.

Have you anything to add to that statement of difficulties, Mr Haig?

MR HAIG.—If you have two jurisdictions on a stretch of line, that is, if a portion is taken out and put under another police administration, police investigations will obviously be embarrassed very greatly, and there would be much overlapping.

SIR AUSTEN HADOW.—There are really three classes of lines which have to be considered in connection with this retrocession; the first class comprises strategic lines, the second, important non-strategic through routes, and the third, unimportant non-strategic lines. It was only in the case of the third class that there was any real idea of retroceding jurisdiction.

CHAIRMAN.—Is it correct to say that, as a result of the discussion which has taken place, the Home Department, the Political Department and the Railway Department are in agreement that there should be no retrocession of jurisdiction on any main and through routes,

the

CHAIRMAN—There is the further question of the minimum jurisdiction which should be retained on railways of all three classes. Am I correct in saying that proposals have been made to meet specific difficulties experienced by Durbars in the matter of (1) the Arms Act, (2) extradition, and (3) seditious meetings on railway lands within State territories, and that, if those proposals are carried through, they would go far to remedy the legitimate grievances of the States?

Mr. WATSON—That is my opinion. I do not know whether the proposals with regard to the Arms Act go as far as some of the Durbars would like. But I think they go as far as is reasonable. We propose to give annual licences to all nobles of the State for ordinary travelling. Beyond the limits of the States they would have to take out the ordinary licence which is universal in India.

CHAIRMAN—Is there any difference of opinion between the Departments on that point?

Mr. WATSON—No There is no difference The proposals apply to all lines, whether strategic or otherwise It has been proposed that in regard to extradition the States generally should be given the same facilities as those enjoyed by the Indore State As regards seditious meetings, I think the Railway Beard have issued executive orders which will prevent political meetings being held within railway limits.

CHAIRMAN.—The next question is whether retrocession of jurisdiction is possible in the case of lines of the third class, that is, unimportant non-strategic lines

Mr WATSON—In
view is that while
certain relaxations
I take, as an example, the case of the Jamanagar railways, where partial cession of civil jurisdiction has been accepted as sufficient. This principle has been followed subsequently in regard to the cession of jurisdiction of the Dholka-Dhandhuka line in the Limbdi State By this arrangement civil jurisdiction is ceded by the States to Government only in so far as it is required for dealing with claims against the railway by individuals and *vice versa*, civil jurisdiction of any other kind being left with the Durbar concerned. This concession is not of very much practical importance, but is one which the States value greatly. Personally I do not see any reason why it should not be extended in similar cases to all Durbars. The cession of full exclusive jurisdiction by the Durbars to the Government is not necessary in the case of lines of the third class. In my experience no difficulty has arisen in Kathiawar owing to the limitation of the exercise of civil jurisdiction by the Government to the extent above explained. And I think it would go a considerable way in meeting
versally adopted

difficult to apply what happens in Kathiawar to other parts of India?

Mr. WATSON—I do not think so.

questions regarding surrender of land for construction of railways. Where it is a question whether a line should be constructed, Government has the right to decide for strategic railways. As regards railways of commercial importance only we arrange matters by negotiation The working of railways is subject to the control of the Railway Board. They are the ultimate technical authority in regard to all disputes between Government and the States.

Colonel PEEL—Is there any question of retrocession of jurisdiction over unimportant non-strategic lines?

SIR AUSTEN HADOW—Retrocession would, in some instances, cause embarrassment, even on the unimportant non-strategic through routes.

MR. HAIG.—The Home Department are disposed to doubt whether any through route could be regarded as unimportant, and it may be taken that they are opposed to retrocession on any through route whatever.

MR. WATSON—There should be no retrocession at all on existing [illegible] k we need [illegible] s my view. [illegible] Kashmir [illegible] zirabad to Jammu.

SIR AUSTEN HADOW.—That is a branch line, which joins the main line at Wazirabad; but only about 18 miles at the end of the branch lie in His Highness's territory. It is not likely to be extended at present If the Durbar want jurisdiction over the short 18-mile length, they might have it.

Colonel PEEL.—I gather that the Maharaja of Kashmir has made a point of it. Some harmless concession might be made in the case of this line.

MR. WATSON (*addressing Sir Austen Hadow*).—Do you know of any others?

SIR AUSTEN HADOW.—I think there is a branch line in Bahawalpur entirely in State territory. There may be others

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Friday, 17th February 1928 (forenoon).

PRESENT:

SIR HARCOURT BUTLER, G C.I.E., K C.S I., *Chairman*
Colonel the Honourable SIDNEY PEEL, D.S O, } *Members.*
Professor W S. HOLDSWORTH, K C., }
Lieutenant-Colonel G. D OGILVIE, C I E, *Secretary.*

The Honourable Mr. C. C WATSON, C S I, C I.E, Political Secretary to the Government of India.

CHAIRMAN.—The position of the Political Department is, I understand, as follows.—

[illegible] and the maritime customs [illegible] evy of customs duty by the [illegible] ere not seriously affected. [illegible] an incident of sovereignty exercised by the States themselves in their own territories and not objected to by them in regard to British India The maritime customs were not imposed by the exercise of paramountcy Their character in the beginning was more in the nature of port dues than a serious

Is that, so far as it goes, a correct statement of the view held by the Political Department?

POLITICAL SECRETARY.—Yes

CHAIRMAN.—Do you consider it desirable to mix up questions of relief of an admitted grievance with questions of contributions for defence? Will not this raise questions as difficult as those involved in a Zollverein?

POLITICAL SECRETARY.—It appear . . . the States cannot be separated from . . . to common expenditure on behalf of . . . ites cannot claim a share in the customs revenues of India without undertaking at the same time to bear a portion of the obligation for the defence of India and also of the general charges of the Government of India The account ought to be settled If the States have any balance to their . . . It is probable that . . . ance of the States . . . irect taxation, then they must also accept a portion of the obligation for the defence of India and the whole account will have to be struck and all the items will have to be examined. This might or might not leave them better off I think in some cases it might leave them with a debit balance

CHAIRMAN.—Would it be possible to collect figures which would indicate with sufficient accuracy whether individual States will gain . . . would it be necessary

. . . orked out without the appointment of a special Committee. It should be possible, in the first instance, to find out what proportion of its revenues each individual State contributes to the defence of India and to compare it with the proportion borne by the cost of the army budget to the revenues of all India, including the provinces, and then it would be easy to find out to what extent a particular State contributes to common all-India expenditure or to what extent it falls short If a State does not contribute its proper share to the all-India revenues, that State cannot claim a share in the customs revenues before it has made the balance good to the extent required of it.

Colonel PEEL.—Would it be possible to have a separate individual account for each State?

POLITICAL SECRETARY.—I think it ought to be done ultimately.

CHAIRMAN.—I suppose it would be possible to enter into a contract with the States as a whole or with individual States to give them a certain sum out of the customs revenue. This contract might last for three years and be revised at the end of it?

POLITICAL SECRETARY.—I should think so. I see no intrinsic impossibility in such an arrangement

CHAIRMAN.—That would save very difficult and elaborate calculations everywhere

POLITICAL SECRETARY.—It might be a five years' agreement.

CHAIRMAN.—Is the figure of 15 per cent. accepted by the Government of India as a reasonable expenditure by a State for defence generally?

POLITICAL SECRETARY.—It is.

CHAIRMAN.—Has that figure been accepted by the Finance Department?

POLITICAL SECRETARY.—It has been fixed in consultation with the . . . nce Department

Professor HOLDSWORTH.—I suppose each of the States stands on a different footing, some having ceded territory, some paying tribute, &c., would it be possible, having these points in view, to come to a general agreement as a whole?

POLITICAL SECRETARY.—I think there would have to be some agreement with the States as a whole. I do not think it would be practicable to have a separate agreement with every State individually.

CHAIRMAN.—The main point that you wish to make is that the States are not entitled to any relief in the way of a share of the Imperial customs unless they take with it a share of the obligations of defence, &c. which are now met from the Imperial customs revenues.

POLITICAL SECRETARY.—Yes that is my position.

Colonel PEEL.—What justification have the Government of India for imposing these customs duties on the Indian States?

POLITICAL SECRETARY.—The justification is that they do not contribute their due share of the cost of defence and of the Government of India charges generally. But it is possible that there may be a balance in their favour and they ought to get that balance. I would make it a matter of account.

Colonel PEEL.—You have no doubt about the right of the Government of India to levy these customs duties on the States and spend them in British India?

POLITICAL SECRETARY.—To some extent they are spent on behalf of the States also.

Colonel PEEL.—I want to know whether your views are justified by the general position of the Indian States?

POLITICAL SECRETARY.—That seems to me largely a question of account. Some States have no specific treaty involving protection, but protection is afforded to one and all of the States. They occupy, roughly, a third of India. One-third of the defence obligation of the Paramount Power should fall on them, but these obligations are now borne by the Government of India on behalf of the States. To some extent the States are absolved from the obligation by treaties of protection, to some extent they contribute themselves by the maintenance of their States forces. It seems to me that they are under an obligation to contribute to an adequate extent.

Colonel PEEL.—It seems to me that a general account would be almost impossible to make out. It seems to me that it is not a matter of account, but only a matter of grace, if the Government give the States any share in these customs duties.

POLITICAL SECRETARY.—The grievances of the States ought to be settled on an equitable basis. In order to get a reasonable agreed basis we would have to go into figures.

CHAIRMAN.—Have you any reason to believe that the Princes will agree to the violations of their sovereignty involved in the fixing of their expenditure under certain budget heads?

POLITICAL SECRETARY.—I think they would.

Colonel PEEL.—Have you any machinery for finding out how much they are spending under various heads of administration?

POLITICAL SECRETARY.—Political Officers know generally about such matters.

CHAIRMAN.—What classes of Princes are involved—the 108 Princes who have seats in the Chamber in their own right or the 127 Chiefs who are represented in the Chamber?

POLITICAL SECRETARY.—I would include all who choose to come in.

CHAIRMAN.—Have these 127 Chiefs powers to impose interna customs duties?

Political Secretary.—Yes, most of them do. A great many in Bihar and Orissa, Kathiawar and elsewhere.

Chairman.—Population as the basis of distribution is, you say in your note, unfair probably to British India. Would you be prepared to accept the view of the Central Board of Revenue that one subject of a State should count two-thirds of a subject of British India? Considering that Europeans and people of European habits are so few in the States, do you consider that the consumption of foreign goods in the States would amount to one-third of the consumption of the inhabitants of British India?

Political Secretary.—It would not come to even one-third. I would be prepared to admit that the consumption of foreign goods in some of the States is very much less than in British India.

Chairman.—I suppose that would be an easier basis of calculation than gross revenue?

Political Secretary.—Certainly it would be.

Chairman.—Would the Legislature of British India have anything to say to an arrangement made by the Government of India with the States?

Political Secretary.—In my opinion it would not.

Chairman.—The Committee appointed by Lord Reading advocated a Zollverein, the fundamental principle of which would be (*a*) the [illegible] by the officers of the Govern- [illegible] (*b*) the abolition of all inland [illegible] revenue among British India and the different Indian States [illegible] e [illegible] y deprecated any alteration of the financial relations between the Government of India and the States except in the direction of federal unity. Would it be possible to let the States come in singly into a Zollverein?

Political Secretary.—I see no practical difficulty about that.

Chairman.—In the course of the discussions on this question a calculation has been made as to the amount which from all sources the States pay to the Government of India. The details of this statement have been somewhat criticised. Would it be possible by the collaboration of an officer of the Political Department and an officer of the Finance Department to work out a sufficiently accurate statement to show the total payments now made by the States to the Government of India?

Political Secretary.—I think it ought to be possible.

Chairman.—What is the present policy in regard to maritime ports in Indian States?

Political Secretary.—The policy of the Government of India as a whole is to obtain control of the ports in maritime States. They wish all States to agree to such a measure of inspection by Imperial Customs Officers as will ensure that the tariffs are not only the same, but that their administrations are on similar lines to those in British India. I understand that the working of the tariff is just as important as the rates.

Chairman.—Is there any difficulty with the maritime States in carrying out this policy?

Political Secretary.—The maritime States as a whole would, in my opinion, be prepared to accept what the Government of India wish in the direction of *inspection* by the use of certain formulæ, which would, publicly at least, maintain their sovereign rights and position. If this

terms with the States that already mint their own currency to introduce British currency?

POLITICAL SECRETARY.—Yes

CHAIRMAN.—You consider that the right to mint belongs to the internal sovereignty of the States, but that the Paramount Power should in the public interests not allow any new mints to be opened?

POLITICAL SECRETARY.—Yes.

CHAIRMAN.—You also consider that generous terms should be offered to get existing State mints closed?

POLITICAL SECRETARY.—Yes

CHAIRMAN.—What was your experience of the kori currency in Cutch?

POLITICAL SECRETARY.—Owing to the belief of the Durbar that the high rate of the kori was profitable to their finances, they have managed, by limiting the minting of koris and by prohibiting the use of other currency, to force the value of the local coin up from about 470 koris to Rs. 100 to the present rate of 150 koris to Rs 100, although the silver value of a kori is 2 annas only. The result has been that all the local export trade has been ruined and that a good deal of the agricultural land has been driven out of cultivation. There is no question that the currency policy of the Durbar is largely responsible for it. By this method the Ruler has driven many of his traders out of the State, and he cannot be made to believe that he is doing anything wrong as long as he can get more rupees for his koris

CHAIRMAN.—Your belief is that a local currency is bad for the local people and that a uniform currency makes for national unity?

POLITICAL SECRETARY.—Undoubtedly. With a local currency Rulers are able to ruin their States in a way which often years of misrule will not do It would be much worse if they had paper currency as well.

CHAIRMAN.—Is it now the policy of the Political Department to avoid currency reforms in Indian States during minorities?

POLITICAL SECRETARY.—Yes.

Dealings between Indian States and Capitalists and Financial Agents.

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CHAIRMAN.—I understand that the Princes have accepted that summary, except for certain verbal amendments which have been proposed but not as yet agreed to.

POLITICAL SECRETARY.—Yes

CHAIRMAN.—Do you consider section 125 of the Government of India Act to be necessary or to be in need of modification?

POLITICAL SECRETARY.—I consider it to be necessary.

CHAIRMAN.—Do you consider that the policy of requiring the sanction of the Government of India to interstatal loans should be upheld?

POLITICAL SECRETARY.—Yes.

CHAIRMAN.—Notwithstanding the fact that there is greater communication between the different States you still think that the sanction of the Government of India should be required for interstatal loans?

POLITICAL SECRETARY.—Yes

CHAIRMAN.—What are the dangers of interstatal loans, if not carefully regulated?

POLITICAL SECRETARY —The general conditions and the credit of the borrowing State may not be known to the lending State If the creditor be a powerful Prince, by imposing unnecessary conditions for the security of his money he may be able to harass the borrowing State As the Government of India only would be in a position to say whether a particular State would be able to repay the loan in future years out of its surplus and also to testify to the credit and condition of the State in general, it is necessary that the Government of India should have an opportunity of offering friendly advice to both parties and be in a position to veto the loan if necessary

Minutes of evidence recorded before the Indian States Committee at the Imperial Secretariat, New Delhi.

Friday, 17th February 1928 (afternoon).

PRESENT

Sir HARCOURT BUTLER, G C I E, K C S I., *Chairman*
Colonel the Honourable SIDNEY PEEL, D S O } *Members*
Professor W S HOLDSWORTH, K C }

Lieutenant-Colonel G. D. OGILVIE, C I.E, *Secretary.*

The Honourable Sir BASIL BLACKETT, K C.B., K C S.I, Finance Member.
The Honourable Mr E BURDON, C.S I, C I E, Secretary, Finance Department
The Honourable Mr C C WATSON, C S I, C I E, Political Secretary

CHAIRMAN (*addressing Sir Basil Blackett*) —On what grounds would you meet the claim made by the States that the maritime import duties are transit duties to the Indian States for which the goods are destined, it being the policy of the Government of India to abolish all transit duties?

FINANCE MEMBER —The difficulty of this question is that it is almost impossible to answer it without some assumption as to what the political relationship of the Indian States is to British India If the Indian States were politically independent sovereign States, as, for example, Switzerland, many of them, though not all, cut off from the sea and having an avenue for imported goods across British territory, then I suppose it would be perfectly impossible to continue these duties, whether in the form of transit duties or duties which have the effect of transit duties It is a matter of history that the Indian States have not in practice or by any treaty or convention been entitled to the international privilege of receiving goods within their territories free of the customs duties levied by the Indian Government at the sea coast

CHAIRMAN So you base the right of the British Government to impose duties on the historical relations of that Government to the Indian States?

FINANCE MEMBER —Yes The matter was considered at some length by a Special Committee of the Council, the report of which is before the

Committee. I was one of the signatories to the report, and am in full agreement with the conclusions therein recorded.

CHAIRMAN.—The States appear to have raised no objection until there was a sharp rise in the duties?

FINANCE MEMBER.—The increase in the duties during and after the war, and the adoption of a policy of discriminating protection by the Government of British India, have undoubtedly had the effect of increasing the cupidity of the States for a share in the customs receipts.

CHAIRMAN.—Has not the increase in the customs duties also involved a very large increase in the indirect taxation of the population of the States?

FINANCE MEMBER.—Undoubtedly it has had that effect; all the customs duties are in essence a charge on the consumer, and in so far as imported goods are consumed in the Indian States it is the Indian States who are being taxed by the collector at the maritime ports of India. On the other hand, the Indian States have shared in the benefits of the policy of discriminating protection which has lately been adopted by the Government of India.

CHAIRMAN.—Have the Indian States derived any direct benefit from any of these protective duties?

FINANCE MEMBER.—Certainly; for example, the iron and steel industry in Mysore The ironworks have had their share of the benefit. Another instance is matches, and you have many cases in which protective duties have benefited the States.

CHAIRMAN.—Still the main benefit of the protective duties has been to British India?

FINANCE MEMBER —The political conditions in British India are more suitable for the development of indigenous manufactures than the political conditions in many of the States

CHAIRMAN —Would you be prepared to consider it a grievance, or, if not a grievance, a matter for reasonable complaint by the States, that the maritime customs were so suddenly changed and so rapidly raised, whether for revenue or for protective purposes?

FINANCE MEMBER.—I do not think that I could admit that it was a grievance. It was one of the consequences of the relationship between the Paramount Power and the States.

CHAIRMAN —I gather from the report of the Special Committee of Council that they were not disinclined to allow the States to have some share of the customs revenues provided that the States were to fulfil certain conditions?

FINANCE MEMBER —The conditions are not very easy of fulfilment. The ideal, of course, for India is free trade throughout the continent of India and economic unity. If we can advance towards economic unity by conceding the right of the Indian States to share in the [illegible] item in a general settlement, then I [illegible] on which the Government of British [illegible]

CHAIRMAN.—But without the fulfilment of those conditions you would not be [illegible] concession?

[illegible] son why we should [illegible] I think there [illegible] making concessions of that sort in advance of the settlement of some of the bigger political and economic questions that arise.

CHAIRMAN —Apart from the question of customs, do you consider that there is any reason for being dissatisfied with the contributions

FINANCE MEMBER.—I suppose some kind of balance-sheet ought to be possible. I remember reading Mr Fitze's balance-sheet and taking very little interest in it because it seemed to me to be trying to show imponderables in the form of statistics.

POLITICAL SECRETARY.—Would it not be possible to draw up a balance-sheet of the purely cash items?

FINANCE MEMBER.—Some sort of figures could be produced. I think they would contain a good many hypothetical items, but my objection would be rather that there would be no benefit when they had been worked out. It would be a much more productive enterprise, from my point of view, if, *in order to bring the States into a closer relationship with British India*, a financial settlement could be worked out. I do not think that anyone has ever really envisaged the difficulties of drawing up of a balance-sheet of the advantages and disadvantages under present conditions. The existence of internal tariff customs in the States is, for what it is worth, a disadvantage from the point of view of the economic unity of the country as a whole. One of the real difficulties is that these States are under the government of autocrats, and therefore their credit in the market is not high. That has, I think, retarded the economic development of India as a whole. In regard to contributions to the Central Government, the States are on the whole in a better position than the Local Governments—for example, income tax is a very important item which the States do not pay. There would be large contributions to income tax if the States were brought into federal unity with British India, especially if the Rulers paid *income and super tax*. *All these movements and discussions are* undoubtedly the beginning of the development of an organic union of some sort between British India and the States. I am talking now in the region of hypothesis.

CHAIRMAN.—The conditions for a Zollverein are laid down in the Special Committee's Report. If a Zollverein could be agreed upon between all or most of the principal States and British India, how could that Zollverein be worked in practice? Could you allow the States to come into the Zollverein one by one, or would it be necessary to have a more general entrance of the States into the Zollverein?

FINANCE MEMBER.—The conditions laid down in the report of the Committee include two, to which objection might very likely be taken by the States on the ground of their internal sovereignty, namely, the administration of the Zollverein by the officers of the Government of India even in maritime States and the association of representatives of Indian States with the Indian Legislature in the determination of policy. These are difficulties, but they are not insuperable difficulties. The conditions of entrance into a Zollverein may possibly not be regarded as all against the States. British India is interested mainly in its aspect as the Paramount Power which takes an interest in the economic welfare of India as a whole. It has no particular inducement to admit States. British India would object to a Zollverein, which means giving a share of the proceeds of the duties to the States, unless this concession is a return for something approaching the organic unity

of India as a whole. It is possible that individual States might come into some kind of relationship with British India on that basis, while others would remain out. I do not think there would be any insuperable difficulty in dealing with some only of the bigger States. The smaller States would be extremely difficult to deal with in isolation. But you could presumably deal with some of the bigger States one by one. It is in connection with the maritime States only that the question of administration by British Indian customs officials arises, and speaking as one interested in British Indian administration I should regard it as almost essential that the administration of Customs should be unified under the control of the Government of India. I would put it definitely that way; though from the point of view of revenue interests alone there might possibly be a half-way house, there are other questions like the prevention of smuggling, the control of the tariff, the uniformity of administration with reference to international obligations, &c., which are not directly revenue producing, but which it is essential to keep under the unified control of the Government of India.

CHAIRMAN.—Supposing it was desired to enter into some arrangement between British India and the States, would the Legislative Assembly have anything to say to such an arrangement?

FINANCE MEMBER.—I am sure it would. I am afraid that my answer to the last question did not deal with the point about the right of the States to have some say on the question of the scale of customs duties. I think it would be very difficult in the present circumstances to persuade the Indian Legislature to have anything to say to such a proposal. It takes you almost the whole way to organic unity or federation of some sort. The Indian Legislature, I think, would hardly give up the power to modify the tariff with reference to their revenue needs and to be able to act quickly, and also the power to continue their policy of discriminating protection. It might be possible to give the States the right—I think they have it already—of making representations to the Tariff Board when the Board is considering the question of the protection of a particular industry. I rather think that the views of one State, or possibly more than one, have been put before the Tariff Board in the past, but that is a matter which can be verified; I am not sure about it. Beyond that I do not quite see how we can go further. We could not agree, before introducing a change in the customs tariff at the time of the budget, to invite the Indian States to express their views before it is announced. We cannot very well give [illegible]

[illegible] system if we were prevented from taking action in such matters without prior consultation with the States.

Colonel PEEL.—You are in the position of imposing this taxation on the one-fifth of the population of India?

FINANCE MEMBER.—The Paramount Power has, as a matter of history, exercised that power.

CHAIRMAN.—The Paramount Power exercised that power without any protest on the part of the States for a long time. The States did not protest until the customs duties were raised to such a point that they were seriously felt.

FINANCE MEMBER.—The relationship between British India and the States is very anomalous, and this is one of the anomalies connected with it.

Colonel Pitt —On what grounds do you lose your right to impose this duty?

Finance Member.—Our grou[illegible] prohibition and the practice of [illegible] India have consistently adhere[illegible] practice, with the exception, I [illegible] view and looking into the economic unity of India as a whole, it seems to me that the Government of British India are bound to maintain this right and exercise it until an equivalent concession leading towards greater unity is possible

Chairman —Would you regard the abolition of internal customs a *quid pro quo* for a share in the customs receipts?

Finance Member —It would be an advantage to the economic unity of India if we could get rid of internal customs barriers. Practically all the advantages would, however, accrue to the subjects of the States only Any financial arrangements on such lines would leave the Princes neither better nor worse off than they were before It would be the subjects of the States who would gain, and it would be too much to ask the taxpayer of British India to replace the sum surrendered by him to the States by other forms of taxation, simply as a contribution to the economic unity of India which is going to benefit only the inhabitants of the States

Chairman.—Supposing a Zollverein could be brought about in the near future, would you, as I understand from the report of the Special Committee, wish that any contribution to the States should be based upon population rather than on area, or any other form of calculation such as revenue, gross receipts and expenditure?

Finance Member —A population basis would undoubtedly be the simplest

Chairman —It is stated in the notes of the Central Revenue Board that a large percentage, perhaps 20 per cent, of the customs revenue is derived from articles imported by Europeans or Indians who have adopted European style of life and the Central Board of Revenue have worked out on a rough calculation that the consumption of a subject in the Indian States would be about [illegible] subject in British India. Do you acc[illegible]

Finance Member —I think so I [illegible] subject, but that would be, speaking generally, a fair way to approach the matter There is no doubt that our present customs tariff does weigh heavily on the European in India, and next to him on the man who adopts European standards of life, and there are certainly more of these classes in British India than in the Indian States.

Chairman —If nothing more can be done at present, would you be prepared to give to all the Princes (108 in number) who are members of the Chamber in their own right the privilege now accorded to 21- and 19-gun rulers (10 in number), to import duty free all goods intended for their personal use and that of their families? What would be the approximate cost of the concession?

Finance Member —The cost of the concession now given to 10 Princes was taken as Rs 2,20,000 in 1925-6 The cost in the three later half-years has been —

(1) Second half, 1926, Rs 2,16,177,
(2) First half, 1927, Rs 1,34,704,
(3) Second half, 1927, Rs 63,226.

or an average of Rs 1,38,000 for each half-year, or Rs 2,76,000 per annum. It is impossible to estimate the cost of the concession if

extended from 10 Princes to 108 Princes, as there is no means of estimating the ratio that the personal expenditure on imported goods of the Princes, who do not now enjoy the concession, would bear to the corresponding expenditure on those who already enjoy it. Even a comparison of privy purses, if such were possible, would not help much, as the objects on which personal income is spent depend so greatly on idiosyncracy. It is suggested that, even if there were no abuses of the concession, it might cost as much as 15 lakhs a year. It is not a concession which the Finance Department would regard with any favour. The existing one is not always easy to work, and any extension of it would tend to raise political questions It is not desirable even from the point of view of trade and commerce in India. It would definitely interfere with two classes in British India. The manufacturers in India would lose the protection of tariff against imported goods, whether the tariff is deliberately protective or not That is

uniforms in England and bring them out here than it is to buy them after customs duties have been paid. The second class who would be affected would be the stockists of such articles as motor cars and jewellery, of which the Princes are the best customers. The concession is one of a kind that we have been trying our best to get rid of. For instance, within the last few years we have made all the Local Governments pay duty on imported stores There have been cases in which the Government of India as a whole had stocks of goods in India, which they could not dispose of because the Local Governments were importing direct without paying duty. The same applies to any extension of the existing concessions So that from a practical point of view the proposal is almost entirely objectionable One has to remember that even diplomats are known to abuse the privilege of free customs entry, and it is impossible to suppose that we should not lose a good deal more than the amount of revenue attributable to the purely personal expenditure of the Princes concerned.

CHAIRMAN.—I gather, then, that you are not all in favour of it. But in certain circumstances you might agree to it?

FINANCE MEMBER—I think that if a question ever came up while I was a member of the Government of India I should be inclined to fight stoutly against the extension of the concession, and I think that any Finance Member and any Commerce Member at any time would be likely to take that attitude.

Colonel PEEL—Do you think it justifiable to go on indirectly taxing the inhabitants of the States whom the Government of India have promised to protect?

FINANCE MEMBER—If the Indian Princes were paying income tax, the case of their States for a share in the customs duties would be stronger As a mere matter of comparison, I think it is undoubtedly

provinces

an States.

very small

extent for the benefit of the provinces. A great deal of the expenditure of the Central Government is undoubtedly on behalf of, or in the interests of, the inhabitants of the sub-continent as a whole

Colonel PEEL—Quite apart from military protection?

FINANCE MEMBER—The Central Government spends practically nothing for the benefit of the provinces within the provinces. That is all spent by the provinces who get no share of the customs revenue;

that is Education Health Sanitation, Roads, Police—everything that you can think of—is a charge on the provincial revenues. The central revenues go mainly towards expenditure on the Army and the Headquarters Staff of the Government of India, except for a few grants for things like the Hindu University at Benares or the Aligarh University. British India is not an economic unity separated from the States by any natural boundary, and so much of the expenditure of the Central Government is on behalf of India as a whole that it is easy to push the claim of the Indian States too far.

POLITICAL SECRETARY. With regard to paramountcy, we never claim to include internal taxation as a right of sovereignty.

FINANCE MEMBER.—That I think, probably is true.

POLITICAL SECRETARY.—So that our taxation really arises from territorial position?

FINANCE MEMBER.—Yes. That of course accounts for the difference of treatment between the maritime States and the inland States. In the case of maritime States, if we had insisted on taking the customs duties we should have been taking direct taxes from the inhabitants. In the case of the inland States we are reaping the benefits of our geographical position.

The important point is that it is the absence of territorial position that has made us hesitate in enforcing our schemes on the maritime States. The concessions to the maritime States in the way of customs arrangements would probably not have been allowed had the present developments been foreseen. My broad position is that everything should be done with a view to working towards a greater and greater economic unity of India. If the claim of the States to a share of the customs revenue were conceded, it could only be done in the form of a rough and ready gift out of the proceeds of customs duties to individual States, for which, as far as I can see, there would be no reasonably adequate return to the taxpayer of British India. It would mean simply taking away something which he has got at present, without any argument except that he ought not to have it. There are so many other things that require settling that you cannot settle this one alone without taking all the rest into consideration at the same time.

CHAIRMAN.—Have you any general observations to make on the financial relations between British India and the Indian States? I gather from what you state in dealing with particular questions that your general attitude is that you would not wish to see any alterations in the financial relations as a whole between British-India and the Indian States unless they were part of a movement towards economic and fiscal unity.

FINANCE MEMBER.—I think that sums up my position quite sufficiently. I have no desire to extend the sphere of the power of Government to tax the Indian States, and I should like, in the interests of India as a whole, and I believe in the interests of each part, to see some improvement from the economic point of view, and improved political relationship leading to increased economic prosperity. A reconsideration of the financial arrangements is, I think, desirable, and would necessarily follow.

CHAIRMAN.—In the event of the Indian States being placed under the Viceroy instead of under the Government of India as at present, would any financial adjustment be necessary? The possibility might arise of hav[illegible] nditure and receipts in connectic[illegible] ien be necessary?

FINANCE [illegible] separation it would be necessar[illegible] not come out of the

Indian taxpayer's pocket with which to finance the expenditure of the Political Department. I do not think that the Political Department would be self-supporting.

POLITICAL SECRETARY.—It would not.

FINANCE MEMBER.—If money is to be found to pay the expenses of the Political Department it must come either out of the British Indian taxpayer or out of the States. If it is to come out of the British Indian taxpayer it must form part of the general budget.

Colonel PEEL.—Assuming the extreme case of a Dominion British India?

FINANCE MEMBER.—In that case I do not think you could avoid a ... my only ... Political ... ket.

CHAIRMAN.—The last question is, what procedure would you recommend for the joint discussion of general questions between British India and the States with a view to both sides being heard before decisions are reached.

FINANCE MEMBER.—I have thought a certain amount on this subject, a good deal in fact, at various times, but I have never arrived at any particular conclusion. You must begin with the assumption of some sacrifice of sovereignty on the part of the States before we can get anywhere at all. If they were prepared to do away with their Chamber and send representatives to the Council of State, there might be possibilities. It seems to me that the question depends on whether you can bring about some form of organic unity.

CHAIRMAN.—What would you think of a scheme under which the members of the Governor-General's Executive Council might be brought into touch with any other body to discuss questions which affect only the Indian States?

FINANCE MEMBER.—Before anything like that could be done the States would have to bind themselves to accept the decisions of their representatives, and a ... would be necessary. ... with the States as ... protective tariff would involve no surrender of sovereignty on their part if they were merely given an opportunity of being heard before the Government of India came to a decision. To that extent one can see some sort of consultation on League of Nations lines, but not anything that would bind the Government of India to accept any views put forward by the Princes.

Salt.

CHAIRMAN.—We have not received any statement from the Princes as to their grievances in connection with the taxation of salt, but past correspondence seems to indicate that they think that the terms fixed some years back were unjust. On the other hand, those terms were expressed in treaties and agreements between the Government of India and the States, and what we want to ask you is "Do you consider that these treaties have worked well, and, if not, have you any suggestions to make in regard to their revision?"

FINANCE MEMBER.—Broadly speaking, I think I can say that the arrangements seem to have worked well. I was not quite clear as to the purpose or meaning of this question. We have no particular complaints to make ourselves and we have not found complaints on the other side very frequent or very important. I do not think that there is much friction between Government and the States in this matter.

State concerned—and the Government of India had actually to buy out the State line. It may be, as Mr. Watson says, that, as long as it is laid down that an independent system cannot, without the assent of the Government of India, extend beyond the limits of a particular State, Imperial interests have not much to fear. But, as a matter of [illegible] g, of which I was one [illegible] was another member, [illegible] that to which I have already referred. Mr. Watson also says that it would suffice if the right of the Government of India to open Imperial telegraph offices in a State were confined to occasions on which the interests of India as a whole were considered to be materially affected. But it would be impossible, once we built a telegraph line in or across a State, to confine its operations to Imperial purposes alone Moreover, if you have traffic transitting across a State, that State will immediately raise the question of compensation on the ground that the Department was making a profit at the expense of the State by the line which had been established in or across the State

CHAIRMAN.—Is it a fact that the Committee appointed by Lord Reading recommended the following amendment to the Foreign and Political Department resolution of the 6th December 1923 in addition to the cancellation of clause I (ii):—

(*a*) After the first sentence of clause I (iii) insert:—

"But in view of the responsibility of the Government of India for the general telegraph system, it is essential that independent systems should be constructed only with their concurrence No claims for compensation on the ground that different systems compete with one another shall be entertained."

(*b*) For the second sentence of clause II, substitute:—

"In the event of a State disagreeing with a proposal, the views of the State will be forwarded to the Foreign and Political Department of the Government of India; and the final decision on the matter will rest with the Government of India after due consideration of the views of the State."

The important point in this question is the second sentence of (*a*). You say that your point is that there should be no claims to compensation.

POLITICAL SECRETARY.—I am prepared to agree that there should be no claims to compensation if the Government of India's line is constructed for strategic purposes. Clause (*b*) goes further than is necessary. I think it will be resented by the Durbars, and it goes further than is necessary.

INDUSTRIES AND LABOUR MEMBER.—I differ from that view. The point is, who is finally to decide whether in any case the interests of India as a whole are materially affected? The conclusion which the Committee arrived at was that this is a matter in which the Government of India must have the final say. It is unlikely that the Government of India would lightly override the wishes of an Indian State in the matter. But the matter is of such importance to the economic development of India that the Government of India must retain the final voice Otherwise a deadlock might be reached, the Government of India on the one side arguing that the interests of India as a whole were considered to be materially affected, and the Indian State, on the other hand, continuing to question the reasons why the Government of India considered that particular case to be one which materially affected the interests of India as a whole.

POLITICAL SECRETARY.—Would you not be prepared to give a reasonable answer?

INDUSTRIES AND LABOUR MEMBER.—Yes, but a continued process of questions and answers would lead to a dispute. There have been instances of such disputes in the past We have always held that the final decision in the matter must rest with the Government of India

CHAIRMAN.—On what grounds do the Government of India base their right to establish a telegraph system in the States? There are no treaty rights in the case?

INDUSTRIES AND LABOUR MEMBER It was admitted in the Committee that the treaties contained no specific provision on this point But it is a generally accepted principle that the Government of India are responsible for the economic development and welfare of India as a whole

CHAIRMAN.—They also have certain obligations towards the States

INDUSTRIES AND LABOUR MEMBER.—Undoubtedly they have That is not denied. But that position is not germane to a matter of this sort.

CHAIRMAN.—But this is a matter of internal autonomy, is it not? If we accept your proposition, there is nothing that the Government of India cannot interfere with and the whole autonomy of the States would go

INDUSTRIES AND LABOUR MEMBER.—Posts and Telegraphs is a matter in which the Government of India must take a special interest in view of their responsibility for the welfare of India as a whole.

CHAIRMAN.—Why do you not impose your views in all cases on the Indian States and put forward as your reasons the economic development of India as a whole?

INDUSTRIES AND LABOUR MEMBER.—We do not want to cause more irritation to the Indian States than is unavoidable

CHAIRMAN.—You are putting your case too high

INDUSTRIES AND LABOUR MEMBER.—I am not putting it any higher than what has been the practice in the past before the issue of the Resolution of December 1923

POLITICAL SECRETARY.—I am not prepared to accept the view that the Imperial Posts and Telegraphs offices have been opened in Indian States without the concurrence of the Durbars

INDUSTRIES AND LABOUR MEMBER.—That may be so The point here is this *when we issued the Resolution of December 1923 we practically* committed ourselves to the policy that no telegraph office should be opened in an Indian State if the State objected to the opening of it That is the declared intention of the Government of India in that Resolution The matter came up for discussion before Lord Reading's Committee, and they came to the conclusion that the wording used was inconvenient from the point of view of the general policy of the Government of India, and therefore they wanted to have it modified in the form indicated in the report of the Committee

CHAIRMAN.—But so far the official position as published is that contained in the Resolution

INDUSTRIES AND LABOUR MEMBER.—That is right.

CHAIRMAN.—What is your difficulty now? When you say that the clauses in the Resolution should be rescinded, you are no doubt advocating the present attitude of the Government of India, and you base your view on the *alleged right of the Government of India to* establish a telegraph system or postal system in any State you please, anywhere, without compensation and without any regard for the internal autonomy of the Indian States I am putting it broadly, perhaps.

INDUSTRIES AND LABOUR MEMBER.—I do not think we went so far as that. Before the issue of that Resolution the Government of India undoubtedly exercised that power. They could establish a telegraph office anywhere in an Indian State.

CHAIRMAN.—On strategic grounds?

INDUSTRIES AND LABOUR MEMBER.—On any grounds. In fact, the declaration of principle before 1923 was that laid down by Lord Curzon.

POLITICAL SECRETARY.—I am not prepared to say without further examination whether there are any instances of the protests of a State being entirely disregarded, nor to agree that Government have used the right to overrule a State without giving any reasons for it. I think that the opening of all telegraph offices has generally been with the concurrence of the Durbar.

CHAIRMAN.—Is it a fa [illegible] office can be opened by [illegible] in any Indian State, e [illegible] ment could not open a [illegible] agreement of the Durbar?

INDUSTRIES AND LABOUR MEMBER.—That is the position undoubtedly in regard to telegraph offices. It is the outcome of the Resolution of 1923. But there are no similar orders in regard to the post offices. In the case of post offices we consult the political authorities of the State concerned before we open a post office. I cannot state precisely whether there have been any cases in recent years in which we have opened a post office in an Indian State against the wishes of the State.

CHAIRMAN.—This is one of the 23 points in which the Indian States in 1920 declared that their internal autonomy rights had been, or were likely to be, infringed?

INDUSTRIES AND LABOUR MEMBER.—That is so.

CHAIRMAN.—I should like to know your views about the right of the Indian Government to establish post offices in the States?

INDUSTRIES AND LABOUR MEMBER.—I doubt whether the right to establish post offices in the States has emerged from sovereignty. Take England, for example. The postal service was initially started in England by private people. Later on the service was taken over by the State, largely, I believe, as a matter of public convenience. In India the same thing happened. We had the zamindari daks. Each zamindar or big landowner used to have his own postal service. Then gradually the Government of India took over all these and incorporated them in a unified service. Therefore, I am not sure that the right to establish postal services is a necessary carollary of the sovereign right.

CHAIRMAN.—You mean it is below the sovereign right?

INDUSTRIES AND LABOUR MEMBER.—That is so. It is largely a matter of convenience.

Professor HOLDSWORTH.—It would be a very flagrant breach of sovereignty for one State to establish a post office in another without the consent of that State.

INDUSTRIES AND LABOUR MEMBER.—True. But in India, you cannot get away from the fact that the British Indian Government is in a peculiar position. That Government has sole responsibility in regard to the economic development and welfare of the country as a whole, and the question is how far the interests of such development should be allowed to be subordinated to sovereign rights which are not inherent in the establishment of a postal system.

States, their accounts do not show a profit. A large share of the revenues of the Postal Department comes from the bigger post offices in British India, such as those at Calcutta, Bombay, Madras, &c In 1925-6 the combined Department showed a profit of Rs. 37 lakhs, made up of Postal surplus 49 lakhs, Telegraph deficit 7 lakhs, and Telephone deficit 5 lakhs. In 1926-7 the profit of the combined Department went down to 10 lakhs, and in 1927-8 we shall probably have a loss of 5 lakhs This is on a turnover of 11 crores

CHAIRMAN —Is it a fact that the reason why neither Department shows a profit is that any profit is devoted to reduction of capital expenditure, the extension of postal and telegraphic facilities, as the case may be, and the reduction of rates? If so, have the States received their share of any extensions that have been made?

INDUSTRIES AND LABOUR MEMBER —The position, generally speaking, is as follows —The declared policy of the Government of India is that the Department as a whole is not intended to be a revenue-earning Department In recent years the practice has been that, when we are framing the budget estimates of the Department for the ensuing year, if we find that there is a likelihood of the estimates as a whole showing a small surplus, we make a larger provision for the extension of postal or telegraph facilities, or for the improvement of the efficiency of the various services, and we thereby bring down the surplus to an inconsiderable or a negligible figure. If the surplus is a sufficiently large one we would take up the question of the reduction of rates We cannot, however, avoid having actually a small surplus, or a small deficit, at the end of each year. We cannot, at the same time, have a large surplus, or a large deficit, year [illegible] to readjust rates. An actual surplus i[illegible]er and becomes part of the revenues [illegible]tal expenditure of the Department. An actual deficit is met from the general exchequer. The following are the figures of profit and loss on Postal, Telegraph (including Radio) and Telephone working in Posts and Telegraphs Department —

(Figures in lakhs of Rupees.)

	Year	Postal.	Telegraph (including Radio).	Telephone.	Total
Accounts	1925-6	48·88	−6·94	−4·91	37·03
Accounts	1926-7	21·85	−12·95	1·35	10·25
Revised Estimate	1927-8	15·97	−19·89	−0·66	−4·58
Budget Estimate	1928-9	7·56	−11·33	4·00	0·23

CHAIRMAN.—Would it be reasonable to include the surplus in the general exchequer of the Government of India?

[illegible]

postal rates, meeting future deficits, &c.

CHAIRMAN —Have the States received their share of any extensions that have been made?

INDUSTRIES AND LABOUR MEMBER —Yes. We treat these States at least in the same way as British India in the matter of extensions. Generally speaking, we do not open a new post office until we have some reasonable certainty that that post office will in the end pay its

way. That is our criterion, and we apply it equally to the States as well as to British India We also make no discrimination between British India and the States in the matter of opening non-remunerative post offices for which the party deriving the facility may agree to guarantee the Department against any loss As a matter of fact, we probably treat the States more favourably than British India in regard to the provision of postal facilities, for it appears from a statement showing the financial results of the working in 1923–4 of British Indian post offices in certain Indian States, which was prepared in connection with the States' claim for a free supply of service postage stamps, that there was a loss in the aggregate.

CHAIRMAN.—There is no question that the working of the post offices in the States as a whole shows a deficit?

INDUSTRIES AND LABOUR MEMBER.—Yes, that is the position.

CHAIRMAN.—What is your experience in regard to Kashmir State?

INDUSTRIES AND LABOUR MEMBER.—There is a deficit of over 4 lakhs, due to the motor mail service from Rawalpindi to Srinagar

CHAIRMAN.—Is it the fact that the Government of India are definitely opposed to any reversal of the policy of postal unity, and that they have decided not to enter into any more postal conventions with States? If so, what are the reasons for this decision?

INDUSTRIES AND LABOUR MEMBER —The answer to the first part of the question is in the affirmative As regards postal conventions with the States, I would draw attention to the document headed "History of Relations between the Imperial Post Office and the Indian States," which explains the reasons underlying the policy of the Government of India in the matter.

CHAIRMAN —How many British post offices are there in the States which have not accepted postal unity?

DIRECTOR-GENERAL, POSTS AND TELEGRAPHS —In Hyderabad there are 46 post offices, in Travancore 96, in Cochin 35, in Junagadh 54, in Kishangarh 4, in Jaipur 48, in Mewar 41, in Shahpura 1, in Charkhari 1, and in Orcha 3

CHAIRMAN.—Do you think that postal unity throughout India is likely to be attained in the future, and what steps would you suggest to bring this about?

INDUSTRIES AND LABOUR MEMBER —The only way we can settle this matter is by persuasion. We will have to explain to the States that there is no question of sovereignty involved or of division of profits between British India and the Indian States, and that this is a public utility service which benefits the inhabitants of the States equally with the inhabitants of British India

CHAIRMAN - [illegible] Question 8 runs — Before the [illegible] a Committee the Government [illegible] not, to accept the claims of the States in regard to the Postal Department so far as—

(a) a share in the revenue,
(b) the establishment of additional post offices and the improvement of postal facilities, and
(c) free or increased supply of service stamps

are concerned

INDUSTRIES AND LABOUR MEMBER —The Government of India only accepted the principle of sharing profits in regard to the Telegraph revenue, not the Postal revenue.

CHAIRMAN.—Do you agree to the statements under (b) and (c) above?

INDUSTRIES AND LABOUR MEMBER —Yes

CHAIRMAN.—Did the Committee appointed by Lord Reading recommend the reversal of this decision on the grounds that there were no profits and that an increased supply of service stamps would amount to surrender of revenue and would eventually react on postal rates and thus fall largely on the shoulders of the British Indian taxpayer?

Was it further decided
States, where the supply
substitution of a grant at
buy out the concession on

INDUSTRIES AND LABOUR MEMBER.—That is right

CHAIRMAN.—Is there any objection to maintaining the paragraph of the Resolution which admits the claim of the States to a share in telegraph profits? No alteration appears to be necessary if it is fully explained that there are no profits.

INDUSTRIES AND LABOUR MEMBER.—The difficulty would be that, as shown in the course of the discussions in 1923, our accounts would be questioned by the States. After our accounts are passed by the Auditor-General we could not allow anybody to question them. Moreover, if the policy is that there should not be any profits, and in actual working ... in the postal service in ... actory from the point o... than to retain it as it ... e loss should be charged to the Indian States.

CHAIRMAN.—That exhausts the questions which were contained in the questionnaire There appear to be two classes of cases in which consultation with the States is desirable.—

(a) When questions of general principle applying to all States are involved

(b) Particular questions of postal arrangements which might arise with any particular States.

the Foreign and Political Department on questions of policy The other questions—opening of individual post offices, &c.—are settled between the Local Postmaster-General and the Indian State concerned through the Political authorities concerned. If there is a dispute which they cannot settle between themselves, the case comes up to the Government of India and the Foreign and Political Department is then consulted.

I have no objection to consultation with the Standing Committee of the Chamber of Princes on questions of policy I think if things are properly explained to the Chamber of Princes they will take a reasonable view of the case.

CHAIRMAN.—May I ask you what happens in the case of a dispute with a particular State about some postal question, where, say, the Durbar of a particular State is discontented with the way the post office is run with regard to some particular class of articles? Would their complaint come in through the Postal Authorities?

DIRECTOR-GENERAL, POSTS AND TELEGRAPHS.—It would come through the Political authorities. The Political Officer would send it to the

Director-General. If it is an ordinary case, the Political Officer would write to the Postmaster-General. If it is a bigger one, he would send it to the Director-General, Posts and Telegraphs.

INDUSTRIES AND LABOUR MEMBER.—He generally sends it to the Foreign and Political Department.

CHAIRMAN.—I have only one general question which I want to ask, which bears on the constitutional question I understand that the States, except 15, are in the Postal Union Of these five have conventions. Are you satisfied that the existing arrangements, whether there are unity arrangements or conventions, cannot be altered, except by mutual consent?

INDUSTRIES AND LABOUR MEMBER.—Any convention can be amended or altered by either party by giving six months' notice. Moreover, no British post office in an Indian State can be shut down without the consent of the Government of India Similarly, a State which has entered into postal unity cannot be allowed to go out of it without the consent of the Government of India

CHAIRMAN (*to the Financial Adviser, Posts and Telegraphs*).—Have you got anything more?

FINANCIAL ADVISER, POSTS and TELEGRAPHS.—No, Sir, nothing.

Minutes of Meeting with the Members of Jaipur State Council held at Rambagh, Jaipur.

Friday, 2nd March 1928.

CHAIRMAN —Does the State claim a share of the Imperial customs revenue and, if so, on what grounds?

FINANCE MEMBER —The Jaipur Durbar claims a share of the Imperial customs revenue on the ground that Jaipur subjects should not be taxed by the Imperial Government, and the Imperial Government customs revenue is paid indirectly by Jaipur consumers

CHAIRMAN.—Has the recent raising of customs duties adversely affected the State or its subjects? If so, please quote facts and figures.

FINANCE MEMBER —It is not possible to give an answer without examining figures and making enquiries, but part of the rise in prices during recent years is presumably due to the raising of Imperial customs duty.

CHAIRMAN —Would the State be prepared to abolish their own import and export duties on condition of receiving a share, to be agreed upon, of Imperial customs revenue?

FINANCE MEMBER —The Council are of opinion that the State would be prepared to consider the abolition of its own import duties on condition of receiving a share of the Imperial customs revenue It would, however, be necessary in the interests of the State to retain certain export duties—for example, on staple foodstuffs and other articles such as cows Local manufactured articles are not taxed on export with the exception of arms and ammunition.

CHAIRMAN —What is the approximate revenue of the State from own import and export duties?

FINANCE MEMBER —The total duty we received during the last th
years (and that [illegible] toms is as follows:—
In the year [illegible] roughly In the
year, 1925-6, w [illegible] we got Rs. 14,4[illegible]

That was our last financial year. The import duty in 1924-5 was Rs 6,85,500 and the export duty was Rs. 8,95,000 and miscellaneous for something about Rs 50,000 for fines and other items. In the next year the revenue from import duty was Rs. 7,40,000 approximately, and the export duty was Rs 9,01,000, and miscellaneous about Rs. 92,000. In the last financial year our import duty was Rs. 6,79,000 and the export duty Rs. 6 88,000, and about Rs 80,000 miscellaneous.

CHAIRMAN —Why was there a sudden drop in 1926-7?

FINANCE MEMBER.—The reason was, first of all, we had no cotton during that year. Rainfall was poor and the cotton crops were destroyed. Another reason was zira (cummin seed). The duty on the export of zira was reduced and the crop was not so good. We do a lot of export business in these two things Then we reduced a number of export duties.

CHAIRMAN.—What is the cost of collection?

FINANCE MEMBER.—In the year 1924-5 the actuals were Rs. 1,40,000, the next year Rs 1,30,000, and last year Rs 1,39,000.

CHAIRMAN —You say the two main items of export duties are cotton and zira (cummin seed). What are the others?

FINANCE MEMBER —Yes. The chief items of export are :—Zira, cotton, ghee, bullocks. These are the four main items.

In the imports first come fine cloth from outside (British and Indian made, both). Next comes sugar for towns with a population of over 5 000, and third comes articles of general merchandise such as motor cars, cycles, &c. Then comes rice. We have got a big import of rice here. They eat rice here.

CHAIRMAN.—Is there any export duty on grain?

FINANCE MEMBER.—Yes, sir. The export of grain was prohibited from April 1919 to July 1925 Then the export was permitted, and export duties were imposed until the 31st December 1927 at 2 annas a maund for wheat, barley and gram and 1 anna per maund for the less expensive grains such as millets, &c. This duty was raised on the 1st January 1928 to 3 annas and 2 annas respectively. This is about 3 per cent. *ad valorem*.

CHAIRMAN —Has that duty affected the agriculturists in their capacity for paying the land revenue?

REVENUE MEMBER.—It has no effect on the revenue paying capacity of the agriculturists.

CHAIRMAN —Is this one of the States in which the Prince is exempt from paying customs duty on imported articles for the personal use of the Prince?

FINANCE MEMBER. —Unfortunately not.

CHAIRMAN.—On what grounds do the Princes who are Members of the Chamber in their own right, other than those already enjoying exemption, claim exemption from the payment of customs duties on articles imported for the personal use of themselves or their families?

FINANCE MEMBER.—The Council consider that His Highness should be exempted, as other Princes are already exempted, in view of the position of Jaipur amongst the Rajputana States.

CHAIRMAN.—Has the State anything to add to the summary regarding jurisdiction over lands occupied by railways in their territories, as amended by the Standing Committee of the Chamber of Princes on the 20th August 1924?

FINANCE MEMBER.—The Council will send a written reply.

CHAIRMAN.—Have you a State railway line, and, if so, is it worked to the satisfaction of the Council?

P.W.D. MEMBER.—We have a State line, but we are not satisfied because an extension is required from the present railhead, which is in the desert, to some other main railway line. This question of extension is under the consideration of the Railway Board.

Mints and Currency.

CHAIRMAN.—Are there any considerations relative to this question which the State would like to bring before the Committee?

FINANCE MEMBER.—We have no difficulty about currency. We have got our own currency and we realise our revenue in local currency and pay our servants in local currency. We have got our own mint and we mint our own coins. We have not coined silver lately. Our surplus of silver rupees is quite sufficient. We also mint gold mohurs. We have not minted gold mohurs during the current financial year, because the price of gold has now been fixed and it does not pay any profits in minting them.

CHAIRMAN.—Are the profits in the minting considerable?

FINANCE MEMBER.—Not considerable; about Rs 25,000.

CHAIRMAN.—Are any inconveniences experienced by the State or by the public over exchange with British currency?

FINANCE MEMBER.—We do not think so. Formerly there was complaint about this as no rate of exchange was fixed by the Government. We have now fixed the rate of exchange to go up and down between certain figures. At present it has been fixed between 4/12 and 5/8, i.e. if Rs 100 of our currency falls below Rs. 104/12 of the British currency or rises above Rs 105/8 we interfere.

CHAIRMAN.—Which is the more common currency in the State?

FINANCE MEMBER.—If you take it in the light of money required by the State, local currency is the more common, as all the revenue comes in our own coin, and all our payments in the State are made in our coin. But if you take the ordinary purchases in the market, the British coin is more common. Dealings in cloth and other articles imported from outside are carried on in British coin and our local coin is mostly used for purchase of foodstuffs and ghee.

Colonel PEEL.—Do not people have to keep accounts in two coins then?

FINANCE MEMBER.—The business firms keep accounts in both. Even the Imperial Bank of India keeps accounts in British coins as well as in our local coins—Jharshahis.

PRESIDENT OF COUNCIL.—I think that although the State now fixes limits of exchange there is still danger for local corners in the local currency.

FINANCE MEMBER.—I do not accept this view.

Dealings between Indian States and Capitalists.

CHAIRMAN.—[illegible]

by the Chambe[illegible]

FINANCE MEM[illegible]

with few outside people

Manufacture and Export of Salt by the Durbar.

CHAIRMAN.—This subject is dealt with by treaties and agreements between the State and the Government of India. Have the State any representations to make in regard to it?

P.W.D. MEMBER.—As regards salt, a written reply will be sent later.

CHAIRMAN.—Do you want to make your statement about sugar now or later on ?

FINANCE MEMBER.—The position is this We wrote to the Government of India about sugar, suggesting that our idea was not to make more money out of duty on gur and sugar. We wanted to give a sort of relief to all the subjects of the State. We said that towns with a population of less than 5 000 inhabitants imported gur and sugar of other States and that a good deal of smuggling of sugar went on, which does not serve the best interests of the people or the State. The duty on gur and sugar was Re 1. 8 a maund and 8 annas on the export of gur per maund We wanted to reduce the duty by 75 per cent. if the Government of India would agree to our having a uniform duty imposed in all places within the State. But they would not agree to it, and suggested that we might have resort to some other sort of taxation It appears that they have not understood our point of view. We do not want to make money out of it, and we are prepared to guarantee to the Government of India that we shall not increase our present total duty received upon the import of gur and sugar.

CHAIRMAN.—You want to make the change not on financial but administrative grounds, and, specially, with a view to prevent smuggling.

FINANCE MEMBER.—Yes, exactly.

CHAIRMAN.—Do you propose to refer the question again to the Government of India ?

FINANCE MEMBER.—Not so soon as this. After all, it is only a year since we referred the matter to them, and they would not agree to it.

CHAIRMAN—You think that they did not understand your proposal ?

FINANCE MEMBER.—Yes, Sir. The Government of India rejected the proposal of the Durbar as they were not prepared to revise a treaty so as to impose new customs or octroi where they did not already exist. They recognised that, if possible, a customs duty on sugar would be preferable to an octroi, but they advised the Durbar to abolish both and to seek some other form of taxation.

PRESIDENT OF COUNCIL.—I wish to add that apart from reasons of administrative convenience the present position is objectionable on the ground that a man in a big town pays more for his sugar than persons outside

CHAIRMAN.—Has the State any objection to the working of the existing system of telegraph and postal services within its territories, and what claims does it make to the profits, if any, accruing from these services, and in the event of losses would the State be prepared to share the losses ?

P.W.D. MEMBER —The working of the postal and telegraph services of the State necessarily causes great loss to the State, but without knowing to what extent the Imperial services are run—whether at a profit or loss—it is difficult to say whether the State would be prepared to share the profits or losses In this connection the Government was addressed in January 1924, but it was not till July 1925 that a definite reply was received to the effect that it was the intention of the Government of India to adhere to the policy of postal units and not to conclude any further conventions Now the position is that we allow the opening of Imperial post offices where they are necessary and where the Postal Department wants, and if a place where the opening of a new Imperial post office causes a loss to the State we do not mind it, as it is the policy of the Durbar to facilitate communications of their subjects. There are now 65 Imperial post offices.

There are 125 State post offices, the income from which is Rs 19,500 a year and the expenditure Rs. 35,000. The figures are not a complete index of the financial position, because all State letters and parcels are carried free without service stamps. On the whole there is probably no profit or loss over the State post offices.

CHAIRMAN.—If there is no profit or loss on the State post offices, on what grounds do you say that the Durbar is losing money by the extension of the Imperial post offices?

P.W.D. MEMBER.—We will have to abolish our post offices at the places where Government post offices will be opened

CHAIRMAN.—Do the Imperial Telegraph Department run a telephone system in Jaipur connected with their trunk system?

FINANCE MEMBER.—Yes

CHAIRMAN.—Is that a general convenience?

P.W.D MEMBER.—The answer to that is, Yes But the State is losing something like Rs 5,000 or Rs. 6,000 a year at present because it has guaranteed receipts from the trunk system up to Rs 12,000 a year. The State is allowed 5 per cent. on ordinary income from the trunk system. The system is a very small one, confined to State officials and about a dozen private persons.

CHAIRMAN.—What procedure would the State desire for the joint discussion of questions in which the interests of the State and the interests of British India may not be identical? Recently special Sub-Committees of Dewans have been appointed by the Standing Committee of the Chamber of Princes to confer with officers of the Government of India. Has this procedure been found to be satisfactory? If not, what procedure is suggested?

PRESIDENT OF COUNCIL.—A reply will be sent later

CHAIRMAN.—Has the State any suggestions to make with regard to the general financial arrangements existing between them and British India?

PRESIDENT OF COUNCIL.—The Jaipur State pays a tribute of four lakhs under treaty and has in recent years been making increasingly large payments for State troops. I would like the question of a reduction of tribute considered

CHAIRMAN.—Are you aware that the Government of India have said that where payments of all kinds exceed 15 per cent of the revenue of the State they are prepared to consider the remission of the balance?

FINANCE MEMBER.—May I put a question? I should like to know whether receipts from investments would come under the head of revenue for the purposes of the 15 per cent. in claiming reduction?

CHAIRMAN.—I have not the papers with me. You have the papers and can find out and send your reply later

Do the State desire to bring forward any questions in connection with opium?

P.W.D MEMBER.—The Durbar's views are contained in the joint report of the Opium Committee dated 27th January 1928, of which I submit a copy.* There is nothing further to bring forward

CHAIRMAN.—Do the State desire to bring forward any questions in connection with Excise?

P.W.D. MEMBER.—I have some complaint about charas. The Punjab Government charges duty on charas at the rate of Rs. 60 per seer, and there is no margin left for us. We represented the case to the Punjab Government, who rejected our claim without giving any

* See page 42 *infra*

reasons, and the matter has now been referred to the Government of India. Our request is three-fold :—

(1) That we may be allowed to import charas from the bonded warehouses in the Punjab on the same terms as Provincial Governments ;
(2) That we should, like the Provincial Governments, enjoy the benefit of rebate on 13 14ths of the duty ; and
(3) That we should for convenience be allowed to get the charas from the bonded warehouse in Ajmer.

This request is now before the Government of India.

CHAIRMAN.—Is there any other question which you desire to bring forward ?

PRESIDENT OF COUNCIL.—No, none.

CHAIRMAN.—Is it true that all the services in Jaipur State, e.g. Education, Electric Lighting, Medical, Water Supply, &c., are made by the State without any charge to the public ?

PRESIDENT OF COUNCIL.—These services are given by the Durbar free to their subjects. But for electric lighting and water supply in private houses in Jaipur a small charge is made.

CHAIRMAN.—How many Sirdars, jagirdars, are there in the State ?

PRESIDENT OF COUNCIL.—There are over 700 jagirs and other feudatories and grantees, including grantees of religious grants called Udaks, occupying altogether about a half of the whole State.

CHAIRMAN.—Do these jagirdars, feudatories, &c., render services to the Durbar or have their services been commuted ?

PRESIDENT OF COUNCIL.—Their services have been mostly commuted in cash now.

CHAIRMAN.—Does the Durbar have much trouble with the jagirdars ?

SOME MEMBERS.—No. The jagirdars sometimes complain against the Durbar and the Durbar sometimes complains against the jagirdars. The complaints balance one another.

CHAIRMAN.—Thank you, gentlemen. We shall await your written reply.

(*Report referred to on page 41.*)

Jaipur State.

Khan Bahadur Maulvi Muhammad Ashfaq Hasan Khan, Member of the State Council for P.W.D., Trade and Excise, is the Committee Member representing the State.

A note containing the information required on the Terms of Reference was placed before the Committee by the Member representing the State. As opium is no longer produced in the State, and there are no stocks of old opium in the hands of merchants or private persons, the Committee's discussion has been mainly concerned with the following three points of importance, in regard to which the Committee unanimously records the conclusions given below :—

1. The President explained that a scheme is under discussion having for its object the purchase and storage in godowns in a central position of all stocks of old opium at present in the possession of merchants and private persons in Central India and Rajputana. These stocks are roughly estimated at 22,000 to 25,000 maunds and the object of the scheme is to enable them to be placed immediately under control and to be passed into consumption as quickly as possible. The assistance required in this connection from States which consume but

do not produce opium would be limited to an agreement to purchase from the stocks so collected the opium that may be required from time to time for their internal consumption.

The opium at present consumed in the Jaipur State amounts on the average of the last three years to 276 maunds annually, of which three-quarters, or 207 maunds, are biscuit opium and 69 maunds are ball opium.

The Committee understands that the Jaipur Durbar is prepared to assist the scheme outlined above, should it be brought into operation, by purchasing the opium required for internal consumption in the State from the central stocks, provided —

(1) That the good quality of the opium is guaranteed and that it meets the taste of consumers in the State.

(2) That the cost does not exceed Rs. 15 per seer ex godown for ball opium or a price which the Durbar does not consider excessive for biscuit opium.

(3) That the authority by which the old stocks are bought and resold to the States makes no profit on the transaction, the price charged being arranged so as merely to cover expenses.

(4) That the Durbar does not undertake to purchase ball opium for consumption in tracts which at present consume biscuit opium. (The consumption of ball opium at present is practically confined to the Malpura Nizamat) The Durbar, however, has under consideration a scheme for supplying State shops with opium in uniform cakes made up at a State factory When this is done it will be feasible to manufacture the cakes from a blend of biscuit with ball opium Recognising the greater cheapness of ball opium, and the importance, in the general interests, of assisting the consumption of the old stocks of ball opium, the Durbar is prepared to consider the possibility of using an increasingly large proportion of ball opium in the manufacture of the cakes

2 It is estimated that a period of something like 10 years must elapse before the stocks of old opium will have passed into consumption After that period the question will arise as to the means by which the States which consume but do not produce opium shall obtain the opium required for their internal consumption. In this connection the Government of India have suggested that States should receive their supply of opium at cost price from the Ghazipur factory. The President stated that the present cost of opium from the factory is Rs. 26 per seer. This is considerably greater than the present cost of opium obtained in Central India and Rajputana. It is hoped, however, that the cost of Ghazipur opium will be reduced when the present large accumulations of stocks at the factory have been diminished. Moreover, the present price of opium in Central India and Rajputana is artificially low, being governed by the fact that there are very large stocks of opium and only a small market available for those stocks. Consequently there must in any case be an increase in the cost price of opium in Central India and Rajputana after the present stocks of old opium have ceased to exist. It is anticipated, therefore, that the disparity in price between the cost of Ghazipur opium and the cost of opium in Central India and Rajputana will be much less at the end of about 10 years than it is at present.

The Committee understands that the Durbar will be prepared to take opium from the Ghazipur factory when the old stocks have been exhausted, provided—

(1) that the opium is supplied by Government at cost price;

(2) that the price is not greatly in excess of any alternative source of supply;

(3) that the factory opium meets the taste of consumers in the State, special measures being taken, if necessary, to manufacture opium of a suitable form and quality.

The third question discussed was the possibility of enhancing taxation upon opium in the State, and the financial results of such a policy. The annual consumption on the average of the last three years is 276 maunds, representing, in a population of 2,636,647, an average consumption of 40·2 seers per 10,000.

The present selling price of opium is Rs. 45 per seer. Duty is levied at Rs. 15 per seer, representing on 276 maunds a revenue of Rs 1,65,600. Licence fee realisations go direct to the Malguzars in the Sheikhawati Nizamat, but elsewhere to the State, the average consumption in Sheikhawati being about 95 maunds. On the remaining 181 maunds the State realises licence fee at Rs. 7 per seer on 136 maunds of biscuit opium, in all Rs 38,080, and licence fee at Rs. 11 per seer on 45 maunds of ball opium, in all Rs. 19,800. The total revenue from licence fees is thus Rs. 57,880 and the revenue from duty and licence fee combined is Rs 2,23,480. (If licence fees in the Sheikhawati Nizamat were taken by the State the figures calculated in the same way would be as follows:—

	Rs.
Revenue from duty - - - - - -	1,65,600
Licence fee (on 207 maunds of biscuit opium) -	57,960
Licence fee (on 69 maunds of ball opium) - -	30,360
Total - - - - -	Rs. 2,53,920

The difference between Rs. 2,53,920 and Rs 2,23,480, i e Rs. 30,440, represents the amount of potential State revenue taken by the Malguzars and is equivalent to 12 per cent of the whole.)

Assuming that the selling price were raised to Rs. 100 and that the State's revenue from duty and licence fee then amounted to Rs. 70 per seer, and assuming that this would reduce consumption by one-half to 138 maunds (representing about 20 seers per 10,000), the total realisations would then be Rs. 3,86,400. In addition, the State would derive increased revenue from the absence of smuggling to be expected, if, as a result of the present proposals, all old stocks of opium were placed under control and the opium arrangements of all States organised on uniform lines It is estimated that if smuggling were completely prevented now the increase in consumption would be about 60 maunds Assuming that these 60 maunds were reduced by the higher selling rate to 30, the additional revenue from 30 maunds at Rs. 70 per seer would be Rs. 84,000. The total revenue from opium would thus be Rs. 4,70,400. If 12 per cent. be deducted from this as the share of the Malguzars, the Durbar's realisations would be Rs. 4,13,552, showing an increase of Rs. 1,90,472 on the present revenue of Rs. 2,23,480

The Committee understands that the Jaipur Durbar is prepared to raise its selling rates to a degree corresponding as nearly as possible with that in force in British India, provided—

(1) that actual experience confirms the anticipation of financial profit to the Durbar which is given above;

(2) that the same price is enforced in all neighbouring States;

(3) that the enhancement is carried out by gradual stages; and
(4) that the Durbar is satisfied that the enhancement does not cause undue hardship to the population.

(Signed) J. A. Pope, *President*

" Ashfaq Hasan Khan
" G. S. Henderson. } *Members.*
27.1.1928. " Azizuddin Ahmad

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Minutes of the Evidence of the Representatives of the Jodhpur State recorded at the Ratanada Palace at Jodhpur.

Monday, 5th March 1928.

Present :

Sir Harcourt Butler, G.C.I.E., K.C.S.I., *Chairman.*
Colonel the Honourable Sidney Peel, D.S.O. } *Members*
Professor W. S. Holdsworth, K.C.
Lieutenant-Colonel G. D. Ogilvie, C.I.E. *Secretary*

Lieut.-Colonel C. J. Windham, C.I.E., Vice-President of the Jodhpur State Council
Mr. D. L. Drake-Brockman, C.I.E., Revenue Member, Jodhpur State
Mr. J. W. Young, O.B.E., Accountant-General, Jodhpur State
Khan Sahib Phiroze Shah Ratanji Kothawala, Superintendent of Customs, Jodhpur State

Chairman.—I saw His Highness this morning. He said that he had nothing particular to say except what the Members of his Council would represent to the Committee. He had no observations to make regarding political relations, which have always been very happy.

(Addressing Colonel Windham.)—Have you anything to say on the first part of our terms of reference, namely, the relationship between the Paramount Power and the States?

Colonel Windham.—I wish only to refer to an old case of dispute. The Durbar is required to pay 1¼ lakhs towards the upkeep of the military force at Erinpura. The Erinpura regiment was disbanded some years ago, and the State now keeps up its own military forces at a cost of 15 lakhs. We have asked Government several times to absolve us from the payment of this old amount, but they insist on making us pay towards the cost of the Mina Corps which has taken the place of the Erinpura Regiment.

Colonel Ogilvie.—The payment was originally made for the Erinpura Regiment. After the war this force was disbanded, but one company of Minas is kept up at Erinpura in its place. The Government of India have held that, although some remission of the tribute was justified, a complete abolition of the tribute was not justified.

Colonel Windham.—The Mina Corps is not a military force within the terms of the treaty, but a sort of levy and a political force engaged to keep the Minas quiet. According to the original engagement the Durbar maintained a body of horse at the service of Government. It is no longer in existence and the State maintains State forces, cavalry and infantry, at a cost of some 15 lakhs.

Chairman.—Except for that you have nothing to say about th relationship between the Paramount Power and the States?

Colonel WINDHAM.—We wish to raise the question of salt revenue.

CHAIRMAN.—The question of salt revenue will come under the second part of the terms of reference.

Does the State claim a share of the Imperial customs revenue, and, if so, on what grounds?

Colonel WINDHAM.—Yes. On the ground that the present system entails collection of revenue from the subjects of the State which goes entirely to the Government of India. Customs duty represents a large payment on the part of the State subjects from which they get no benefit—the whole proceeds go to the Imperial customs of British India, apart altogether from the consideration of defence, for which the Central Government is responsible. The State also spends large sums for defence.

CHAIRMAN.—Has the recent raising of customs duties adversely affected the State or its subjects? If so, please quote facts and figures.

Colonel PEEL.—Have you made up any balance sheet which will give some idea of the net payments made by the State to the Government of India?

Colo

Mr. … r figures for defence amount to 25 … State troops, as well as our irregular forces and police for internal defence.

Colonel PEEL.—Have you made any calculation of what you have to pay indirectly in the way of customs revenue?

Mr. YOUNG.—According to my calculation it is roughly 27 lakhs.

Colonel PEEL.—Is that on the basis of the population?

Mr. YOUNG.—No. It is calculated on the customs charged by the British Government on the goods that we actually receive in the State.

Colonel PEEL.—How much, roughly, is the total value of the goods you get from overseas?

Mr. YOUNG.—The total value, roughly, is $2\frac{1}{2}$ crores a year.

Colonel PEEL.—You calculate that what you receive from the Government of India is not equal to what you pay out?

Mr. YOUNG.—No. It is not.

Colonel WINDHAM.—The recent raising of the customs duties has affected the State very much. Previously the customs duty was so small that it was almost negligible. It is really since the war that the raising of the duties has begun to be felt.

CHAIRMAN.—Has the raising of the Imperial customs duties affected your revenues from internal customs?

Colonel WINDHAM.—To some extent. We have to take into account in levying customs duties from our people the rise in the British India customs.

CHAIRMAN.—Have you reduced your import duties because of the Imperial customs having been raised?

Colonel WINDHAM.—No.

C[illegible]

though their total value has decreased to a certain extent.

CHAIRMAN.—Can you produce any figures to prove this?

SUPERINTENDENT OF CUSTOMS.—I can produce the total imports and exports, both by weight and by value, from the year 1910-1 to 1926-7.

CHAIRMAN.—What were your figures for 1915-6?

SUPERINTENDENT OF CUSTOMS.—In the year 1915-6, value roughly 3½ crores; in the year 1926-7, approximately 4 crores.

CHAIRMAN.—Were the import duties in 1915-6 the same as in 1926-7 *ad valorem?*

SUPERINTENDENT OF CUSTOMS.—Yes.

CHAIRMAN.—The import duties remained unchanged for the period in Jodhpur?

SUPERINTENDENT OF CUSTOMS.—Yes.

CHAIRMAN.—How do you levy customs duty in the State?

SUPERINTENDENT OF CUSTOMS.—On some articles it is levied on maundage and on others it is levied *ad valorem.* The prevailing rate of duty is less than 5 per cent, on an average

Colonel WINDHAM.—The general position is that if the Imperial customs had not been raised so high the State would have been in a position to derive a larger revenue from the internal customs

CHAIRMAN.—Would the State be prepared to abolish its import and export duties on condition of receiving a share, to be agreed upon, of Imperial customs revenues?

Colonel WINDHAM.—That would depend on what the share would be The State would not object to abolition if its financial interests were protected.

Mr DRAKE-BROCKMAN.—There are certain export duties, such as the export duty on grain, ghee and animals, which the State would probably not be prepared to abolish

Colonel WINDHAM.—Before the State could abolish import and export duties it would have to have some assurance that it would not suffer if the Imperial Government suddenly reduced its tariff to a large extent

CHAIRMAN.—What has been the amount derived from import and export duties for the last three years, in round numbers?

Mr YOUNG,—*Import duty*: In the year 1924-5, 15 lakhs, 1925-6, 15 lakhs; 1926-7, 17 lakhs. *Export duty*. In the year 1924-5, 6 lakhs, 1925-6, 5 lakhs, 1926-7, 6 lakhs

CHAIRMAN.—Can you give us the cost of collection in these three years?

Mr YOUNG.—The cost of collection during the three years has been 2½ lakhs yearly, roughly, 12 per cent.

CHAIRMAN.—On what grounds do the Princes who are Members of the Chamber in their own right, other than those already enjoying exemption, claim exemption from the payment of customs duties on articles imported for the personal use of themselves or their families?

Colonel WINDHAM.—This State would claim exemption on the ground of equality of treatment and the services of the State to the Imperial Government.

CHAIRMAN.—Is there anything more about customs you would like to say?

Mr YOUNG.—On the Bombay, Baroda and Central India Railway, which runs through the State from Ajmer to Ahmedabad, articles imported by that railway can be examined and checked with the railway records for customs duty, whereas we have not the same rights in respect of articles exported. Consequently, foreigners exporting

goods from Jodhpur on the Bombay, Baroda and Central India Railway may very easily evade State customs duty.

CHAIRMAN.—Have you represented that point to the Railway Board?

Mr. YOUNG.—Yes. It has been represented to the Government twice.

SUPERINTENDENT OF CUSTOMS.—The case was represented through the Resident. We wanted the railway receipts for exported articles to be stamped by our local customs outposts. This the railway authorities have refused. They have been allowing us to stamp the railway receipts for imported articles before delivery, but no permission of that kind is given to us for articles of export.

CHAIRMAN.—Is that on the ground of transit duties or what?

SUPERINTENDENT OF CUSTOMS.—When once an article is exported and the exporter is a foreigner, in some cases, we have to look on helplessly, and when the exporter goes out of Marwar such cases are not extraditable.

CHAIRMAN.—Have you ever considered in what way you should get a part of the Imperial customs revenue?

Colonel WINDHAM.—No. I have not seen the statistics, but if it is to be on the basis of population it would not be a fair method of computation in a State like this, where the standard of living is not high.

CHAIRMAN.—The Central Revenue Board have made a statement that about one-fifth of the whole Imperial customs revenue is derived from articles consumed by Europeans and Indians who live in the European style, and have come to the conclusion that for purposes of calculating on population the consumption by a subject of an Indian State might be taken as two-thirds of the consumption of a subject of British India. Would you be prepared to accept that as a fair estimate?

Colonel WINDHAM.—Speaking roughly, that would be a fair basis.

Mr. YOUNG.—I should think so. It must be admitted that the consumption per head is lower in the State than in British India because it has no big towns and the population is mainly rural.

CHAIRMAN.—Have the States anything to add to the summary regarding jurisdiction over lands occupied by railways in their territories, as amended by the Standing Committee of the Chamber of Princes on the 20th August 1924?

Mr. DRAKE-BROCKMAN.—Read an extract from some correspondence on the subject of transit of opium by rail within Marwar and said that he would send a reply in the form of a memorandum later.

CHAIRMAN.—Are there any considerations relating to Mints and Currency which the State would like to bring before the Committee?

Colonel WINDHAM.—No.

CHAIRMAN.—Has the State anything to add to the summary regarding dealings between Indian States and Capitalists and Financial Agents, approved by the Chamber of Princes in November 1924 in regard to this question?

Colonel WINDHAM.—A written reply will be sent later.

CHAIRMAN.—The manufacture and export of salt by the Durbars is dealt with by treaties and agreements between the States and the Government of India. Has the State any representations to make in regard to it?

Mr. YOUNG.—The salt sources in the State were made over to Government under treaties made in 1870 and 1879. These treaties

give to Government a lease in perpetuity of the salt sources and thus the Government have a monopoly in one of the most valuable natural resources of the State We receive payments from the Government in two forms: (1) in rent, (2) in royalty. But the two are treated quite separately. Rent is a fixed sum, but the royalty depends upon the production of salt at the sources. In the case of four of our salt sources we have never received any royalty because royalty is dependent on the production and cost of salt. We have no access to the accounts maintained by Government for checking the salt production and the costs. We have to accept their figures, and the four salt sources are always reported to run at a loss The other two sources at Sambhar and Didwana are reported to run on a profit and we get our share of royalty. Actually the position is that we share 40 per cent of the sale price of salt between Jodhpur and Jaipur in the share of 10 annas and 6 annas respectively. The Durbar is not allowed to charge its own export duty on the salt which is found in the Jodhpur State and we have no share in the duty levied by Government, which is now Re. 1. 4 a maund. The effect of this is illustrated at these salt sources which are being run at a loss. The production accounts show that they are being run at a loss Taking into consideration the duty, the losses are really turned into a profit and we have no share in it Further, if Government ceases to work any of the salt sources the Durbar is not allowed to work them, and the closing or partial closing of these sources would mean a substantial loss to the State in the shape of railway traffic A calculation of this made the other day put the figure at 13 lakhs a year from one salt source alone We feel that the royalty and duty are inevitably linked together, as Government can partially close certain sources if others are more productive, and we thereby lose our royalty while the Government is making a net profit on those sources. Government can terminate the treaties, but there are no conditions under which the Durbar can terminate them If Government choose to close down all those sources we are still prevented from working them ourselves

CHAIRMAN.—Would you ask that the salt agreements with the Imperial Government should be revised?

Colonel WINDHAM.—Yes The original agreements are working inequitably to the State

Mr. YOUNG.—In Sambhar the production of salt is roughly 50 lakhs maunds a year, by which Government gets a duty of $62\frac{1}{2}$ lakhs, and the only payment they make to us is 4 lakhs in rent and 3 lakhs in royalty.

CHAIRMAN.—Have you represented your case recently to the Government of India?

Colonel WINDHAM.—No

CHAIRMAN.—Has the State any objection to the working of the existing system of telegraph and postal services within its territories, and what claims does it make to the profits, if any, accruing from these services, and, in the event of losses, would the State be prepared to share the losses?

Mr YOUNG.—We represented this case in 1925 We were told that the general question of the postal arrangements in Indian States was under consideration, and again in 1926 we got the same reply I will send in a written memorandum on this question. As regards parcels coming through the post office which are liable to State customs duty, we are dependent on the post office for dictating the correct numbers of the parcels received We have no means of checking them.

CHAIRMAN.—Have you any reason to suppose that any undue advantage has been taken of this arrangement?

SUPERINTENDENT OF CUSTOMS.—There have been a number of cases in which parcels have been brought to our outposts for payment of duty which had not been dictated by postal clerks, and we suspect postal clerks and merchants join hands in defrauding the Darbar by omitting to give particulars of those parcels. Many such cases have been brought to the notice of the Postal Superintendent here.

CHAIRMAN.—What is the remedy you propose for this?

SUPERINTENDENT OF CUSTOMS.—We want to have the same arrangement with the Post Office as we have with the Bombay, Baroda and Central India Railway for examining their records with our own.

CHAIRMAN.—Does not the same difficulty arise in regard to the exports?

SUPERINTENDENT OF CUSTOMS.—Export duties are generally levied on articles which are mostly raw materials and which do not as a rule go to the post office. Contraband articles like arms and ammunitions might be imported if there is no regular check. It is in the interests of British Government as well as ours that parcels should be properly checked.

CHAIRMAN.—Have you represented this case to the Government of India?

Colonel WINDHAM.—No.

CHAIRMAN.—What procedure would the State desire for the joint discussion of questions in which the interests of the States and the interests of British India may not be identical? Recently, special Sub-Committees of Dewans have been appointed by the Standing Committee of the Chamber of Princes to confer with officers of the Government of India. Has this procedure been found to be satisfactory? If not, what procedure is suggested?

Colonel WINDHAM.—We are awaiting the results of Sir Leslie Scott's scheme. We will send the reply to this question later on.

CHAIRMAN.—Has the State any suggestions to make with regard to the general financial arrangements existing between them and British India?

Colonel WINDHAM.—We have nothing to say in addition to what has already been said above in regard to salt and other questions.

CHAIRMAN.—Does the State desire to bring forward any questions in connection with opium?

Mr. DRAKE-BROKEMAN.—The Opium Committee is coming to the State on the 21st, and I will send a reply in the form of a memorandum later on.

CHAIRMAN.—Does the State desire to bring forward any questions in connection with Excise?

Mr. DRAKE-BROKEMAN.—Read an extract from a letter on the subject of the import of hemp drugs which the Darbar sent to A.G.G. in 1923, and added that he would send his reply later on.

CHAIRMAN.—Does the State desire to bring forward any other questions, *vide* para. 4 above?

Mr. YOUNG.—Railway materials and machinery required for the development of the Jodhpur Railway are not exempted from the customs duty. We are not allowed even the benefit of a refund, as is done in the case of some British Indian railways.

Minutes of a Discussion at Government House, Mysore, between the Indian States Committee and representatives of the Mysore Government.

Monday, 19th March 1928.

PRESENT

Sir HARCOURT BUTLER, G.C.I.E., K.C.S.I., *Chairman*.
Colonel the Honourable SIDNEY PEEL, D.S.O. } *Members*
Professor W. S. HOLDSWORTH, K.C. }
Lieutenant-Colonel G. D. OGILVIE, C.I.E., *Secretary*.

Amin-ul-mulk MIRZA M. ISMAIL, C.I.E., O.B.E., Dewan of Mysore.
Rajasabhabhushana K. CHANDY, B.A., First Member of Council.
Rajakaryaprasakta Diwan Bahadur M. N. KRISHNA RAO, B.A., Second Member of Council.
C. S. BALASUNDARAM IYER, Esq., B.A., Third Member of Council.
Rajatantrapravina Dr. Sir BRAJENDRANATH SEAL, Kt., D.Sc., Ph.D., Vice Chancellor, Mysore University.

CHAIRMAN.—I should like to open the proceedings by thanking you and congratulating you for the great promptness with which you have responded to our questionnaire. Yours is the first reply that has been received and we are very glad to get it. I suggest that you should now introduce your case in any way which you think best.

DEWAN.—The position of the Mysore State, both economically and politically, is not satisfactory at the present time. Politically, we have no voice in the settlement of matters of common interest to ourselves and to the Government of India; and economically, we do not get a share in the common receipts. These are the main problems of the Indian States as we conceive them. We suffer from certain disabilities and a reference has been made in our printed representation to each one of them—jurisdiction over Railways, Posts and Telegraphs, &c. We are under some difficulties with regard to the extradition of criminals.

CHAIRMAN.—How would you like the idea of having a sort of economic union?

DEWAN.—We are contributing both directly and indirectly to the Imperial Government—directly in the shape of a heavy subsidy which dates from the year 1799. This fact alone suffices to make it seem ... quaint survival. The State has ... year for nearly a century, and at ... year for 36 years. The annual sum has from this year been reduced to its original figure of Rs. 24½ lakhs. Even this, we feel, is a heavy burden on the financial resources of the State. Our indirect contributions have been going up year by year. The payment of a cash subsidy in addition seems to us to be an arrangement which is now quite out of date.

CHAIRMAN.—What would you suggest in its place?

DEWAN.—We feel that an expert Committee, specially appointed for the purpose, should go into the whole question of the financial relations between the Government of India and the Indian States, consider the position of each State separately and fix its contribution to the Imperial

Exchequer, and also what it is entitled to out of the common receipts. There should be contributions like the Provincial contributions to the Government of India and all payments in the nature of tribute should be done away with.

Now, as regards the scheme that we have put forward on the subject of the position of the Indian States and the future policy of the Government of India, there is one point to which I would draw your special attention, and that is with regard to the suggested addition of two members to the Executive Council of the Government of India. It is not really necessary that they should be men with diplomatic or financial experience All that we want is that suitable persons should be selected by the Viceroy to represent and safeguard the interests of the States in the Executive Council, and also, to some extent, in the Legislature.

CHAIRMAN.—As regards the creation of two members in the Political Department, modified by your recent statement, do you think that there would be sufficient work for two members? Or, would you be prepared to have one member only?

DEWAN.—We have no objection to beginning with one member and adding another member to the Council if the work is found too heavy for one, and especially if the member is asked to tour round the States to keep in close touch with what is going on and to be a guide and friend to the Ruling Princes, and also bring his moral influence to bear on them.

CHAIRMAN.—You attach special importance to the member touring the States and discussing the issues between the States and the Government of India?

DEWAN.—I attach very great importance to this.

CHAIRMAN —Do you attach importance also to maintaining direct access between the Rulers of the States and the Viceroy?

DEWAN.—That is also most essential. In fact, I feel that the Viceroy's personal touch with the Indian States is a matter of vital importance to them and it should be maintained in all possible ways. The Member of Council might dispose of comparatively unimportant matters on his own responsibility, but really important questions should be submitted to the Viceroy. Purely domestic affairs should not as a rule go before the Executive Council, as has been the case in the past. The two members would deal as a rule with matters of domestic concern to the States, and such matters should be disposed of under the orders of the Viceroy.

CHAIRMAN.—Your proposal is, therefore, that matters affecting only the Indian States and not affecting British India should be dealt with as in the past by the Viceroy, and as to matters which affect both the Indian States and British India, would you refer them to the Governor-General in Council?

DEWAN.—Yes. There is no getting away from that, I fear The Executive Council is in fact the supreme body in India representing the Paramount Power. This method of disposal, with the addition of a concession to the Indian States that they might refer to arbitration any matter in dispute between them and the Government of India, would be a great help to them. As things are at present, when we make an unpalatable request it is apt to be abruptly turned down. For example, in regard to the issue of receipt stamps in the Civil and Military Station, the Government of India allowed us to have the proceeds retrospectively for three years and when we put in a claim for complete retrospective effect our claim was turned down without

assigning any reasons for the decision. There must be some better means of settling such disputes.

CHAIRMAN.—Your claim in effect is that from the Government of India's decision you should have a right of appeal to some other tribunal in India than the Secretary of State in England.

DEWAN.—In justiciable cases. This has been conceded to a great extent in actual practice. The request of a State for arbitration is under present conditions liable to arbitrary rejection. What are we to do in a case, for instance, like that of the receipt stamps? In the Civil and Military Station for over 20 years British Indian stamps were used without our consent, when the understanding was that our stamps should be used. Government admitted our claim, but when we asked them to give us retrospective effect they arbitrarily reduced the period to three years and gave us a paltry sum calculated upon the average based upon the figures of 20 years ago. In a case like this what are we to do? We can only go up to the Secretary of State This particular case may not be of such importance as to warrant an appeal to him, but we think that we should have some outside organisation to which we could refer matters in which we feel that we have been unjustly treated.

CHAIRMAN.—If every case in which a State is dissatisfied with the decision of the Government of India were to be referable to arbitration, there would not be much left to the Paramount Power Would you be satisfied to leave it to the discretion of the Viceroy as to what cases were of sufficient importance to go to arbitration?

DEWAN —That is the present arrangement. The trouble is that the Viceroy is not able to study each and every case himself, and he has to be guided by the advice of the Political Department and very often the appeal is against the decision of the Political Department itself

CHAIRMAN —How are you going to distinguish cases which are justiciable from those which are political?

DEWAN.—Purely political cases must be left entirely to the discretion of the Viceroy

Professor HOLDSWORTH —How are you going to draw the line between these two cases?

DEWAN.—Definition would be rather difficult in respect of cases of a purely political nature. Those will have to be left to the discretion of the Viceroy If we were private parties, we would go to a Court of Law and obtain a decision But in cases where the judge is himself a party, it should not be possible for him to dispose of the case as he liked without giving reasons Generally speaking, I should say that appeals in financial cases should go to some other tribunal for final decision

CHAIRMAN.—You would expect from the jurisdiction of this tribunal, decisions as to what is a political case or what is a justiciable case?

DEWAN —There should not be much difficulty in drawing up a general list of such subjects and dividing it into two schedules—political and financial Cases referable to arbitration would be mostly of a financial nature

CHAIRMAN.—Would you be preferred to accept the procedure by which it should be left to the Viceroy to decide whether a case was political or was suitable for arbitration?

DEWAN.—Some discretion would have to be given to the Viceroy in doubtful cases.

CHAIRMAN.—Have you in the past ever asked for an arbitration?

DEWAN.—No, I do not think so.

Colonel PEEL.—Taking, for example, the case of the receipt stamps, can you work out your plan as an illustration? What would be your procedure to get redress?

DEWAN.—We would ask the Government of India to refer the matter to arbitration.

Colonel PEEL —To what tribunal exactly would you refer?

DEWAN.—To an Arbitration Court consisting of a Judge of a High Court and two others, one appointed by the Government of India and the other by the State concerned.

CHAIRMAN.—A tribunal of the sort recommended by the Montagu-Chelmsford Report for which provision already exists?

DEWAN.—That would be one way of strengthening the hands of the Political Department in matters in which it finds itself in conflict with some other department or departments of the Government of India.

CHAIRMAN.—You say that would be a way of strengthening the hands [illegible] the departments of the Government [illegible] ish India So far, we have been [illegible] one State and the Government of India. Would you advocate the same procedure in cases in which all the States were affected?

DEWAN.—I should be inclined to extend that principle, between State and State and all States and the Government of India.

(The Secretary here explained the action taken on the recommendation in the Montagu-Chelmsford Report on the subject of questions of common interest to the States and British India.)

CHAIRMAN —As the Secretary has explained, the proposal of the Montagu-Chelmsford Report dealing with matters of joint interest has been referred to the States, but no further action has been taken by them in the matter.

DEWAN.—In matters such as tariffs, exchange, posts and telegraphs, salt, &c, decisions were reached by the Legislative Assembly without consulting the States. The States ought to have a voice in such decisions. In order to secure that voice, the States should be represented in the Council of State (in a modified form), say by 30 members, the present constitution of the Council of State being 60 members. It would not be necessary for those members to attend when matters affecting only British India were discussed.

CHAIRMAN.—According to the Montagu-Chelmsford Report, there should be joint meetings between the Princes and the Council of State. Our terms of reference do not permit us to dip into the future to the extent of a federal scheme We are limited to making such recommendations as will adjust differences of opinion on fiscal and economic questions as between British India and the States, and if we cannot produce a satisfactory solution without going into schemes of federation we must content ourselves with advocating a machinery which will actually deal efficiently for the time being with these differences of opinion without prejudicing the future settlement of larger questions.

Colonel PEEL.—Can you suggest under existing conditions some measure under which you could have some voice without going so far as a federal scheme? Would you be content, supposing a scheme was devised for you, to have a share in the customs without any voice in the question of raising or lowering the tariffs?

DEWAN.—For the time being we would. But as the Government of India becomes more and more democratised, power will pass more and more into the hands of the legislative bodies, and battles will have to be fought out on the floors of the Houses. Unless our representatives

were there to try to get their voices heard before decisions are reached in the Assembly or the Council of State, our interests would suffer. I know, however, that most of the Indian States are apprehensive of such a development. They do not want to have anything to do with the democratic institutions of British India.

Colonel PEEL.—Why did you say the cash subsidy was out of date?

DEWAN.—The Mysore subsidy was originally in the nature of indemnity as clearly shown by the Partition Treaty of 22nd January 1799. The exaction of tribute in perpetuity would not, under modern conditions, be justified in principle or attempted in practice.

Colonel PEEL.—Have you drawn up any balance-sheet of financial transactions between the Government of India and Mysore?

DEWAN.—We have not drawn up any. This is a matter for the Committee to go into We are quite prepared to bear our share of the common expenditure

Diwan Bahadur Mr. M N KRISHNA RAO.—We have generally indicated the lines on which a solution might be attempted

Colonel PEEL —The position is different in different States.

Mr. C. S BALASUNDARAM IYER.—If some general principles were laid down, then the accounts of each State could be made up

Colonel PEEL —If a balance-sheet were drawn up, the balance might be against the States as a whole.

Mr C. S BALASUNDARAM IYER —We could not escape that position if it were found to be so

Colonel PEEL.—Some States which were more favoured by that formula would accept it while the others whom it adversely effected would object to it How would you solve such a situation?

DEWAN —Let those who refuse be left out. The States refusing to come under the scheme should be debarred from getting the benefits accruing thereunder.

CHAIRMAN —It does not seem that British India would accept that arrangement. As far as we are concerned, we cannot go into the future All we can do is to see that we do not close the road to future development.

Colonel PEEL —Our inquiry is not extended to deal with problems of federation but the adjustment of financial relations

CHAIRMAN —Have you cosidered the possibility that the Mysore State should enter into some sort of economic Zollverein with British India on its own terms regardless of the other States?

DEWAN —We have put forward a suggestion of that sort in our memorandum, but we have not considered the details

CHAIRMAN —Now as to the Chamber of Princes, what are your views? At present there is no sort of power that can combine the States to some action except the authority of the Paramount Power The States have not yet contemplated the possibility even of the Chamber of Princes binding the different States by its decisions

DEWAN.—I do not envisage any great future for the Chamber of Princes It can at best be an annual august conference enabling the Princes to meet together to discuss personal questions and explain their difficulties to the Viceroy.

CHAIRMAN.—Do you regard it as out of the question that the Chamber should become a body representing the Rulers of all the States and binding the States by its decisions?

DEWAN —I do not think that that is possible. I am not in favour of such an arrangement. As a matter of fact, the Chamber leaves more to

friction and jealousy than anything else. It is in the hands of a few individual Princes, a fact which makes others discontented.

CHAIRMAN.—Is that necessarily so, or is it the result of the fact that so many of the leading Princes absent themselves from the meetings of the Chamber?

DEWAN.—It is very difficult for our Maharaja to go to Delhi and we feel it would not be desirable for him to do so even if he could. There is, moreover, the difficulty of finding a sufficient number of subjects for the Chamber to discuss.

CHAIRMAN.—Is it not possible that every important question which affects British India and the Indian States should come up for consideration by the Princes as a body?

DEWAN.—If our relations with British India became closer, the time will be ripe for a federal constitution. The Princes will have to invite the co-operation of their people more and more. They cannot hope to remain autocrats for all time.

CHAIRMAN.—Mysore in many respects is very advanced, and that was why I asked you whether you had had in contemplation any proposal to enter into separate relations with the British Government or whether you would wait till all other States fell into line?

DEWAN.—I would regard it as a compliment to the State if we received such special treatment.

CHAIRMAN.—What are your views regarding the codification of political practice which was recommended in the Montagu-Chelmsford Report? Twenty-three points were selected on which there were issues and disputes between British India and the States or between the Paramount Power and the States. On these 23 points summaries were prepared in the Political Department and referred to the Standing Committee of the Chamber of Princes. Discussion between the Standing Committee and the Political Department followed, and in certain cases agreement was reached and resolutions were then issued by the Government of India embodying the results of these discussions in the form of rules for the guidance of political officers in the States. In nine cases such resolutions were passed. Was this procedure satisfactory and did your State have any part in it or were you consulted in regard to them?

DEWAN.—The resolutions were sent to the State and our views were obtained.

CHAIRMAN.—Have you any better machinery to suggest?

DEWAN.—It is difficult to think of a better method.

CHAIRMAN.—Please elaborate your views with regard to jurisdiction of railways in Mysore.

DEWAN.—Jurisdiction over the lines owned and worked by the State rests with the State. On the lines which are worked by the Railway Company, though they are owned by the State, the State has no jurisdiction. I venture to think that our request is a perfectly reasonable one. When the management of the railway is transferred to us the jurisdiction will also, I take it, be transferred automatically. The transfer of the lines will take place in about 10 years' time at the latest.

CHAIRMAN.—On what particular lines do you want to resume jurisdiction?

The Secretary to the Committee explained the whole position of the railways in Mysore in detail

CHAIRMAN.—Your contention, I understand, is that Mysore, being a big and advanced State, should be treated in this matter like a British Province?

DEWAN.—Yes. We think that jurisdiction should be given back to us on our own lines. These lines will be handed over to us within the next 10 years, and I do not see why jurisdiction should not be retroceded at once.

CHAIRMAN.—Do you suffer from any other disabilities connected with railways?

DEWAN.—Our claim for income-tax on the profits earned by the railways within the State has also been disallowed

CHAIRMAN.—On what railway lines?

DEWAN —Incomes accruing on the profits of the broad-gauge line, as also the metre gauge lines worked by the companies In respect of the lines owned by the State and worked by the company, the company pays [illegible] India have refu[illegible]

D[illegible] jurisdiction for railway purposes is held to include cession of fiscal rights as well and in this view we do not agree.

CHAIRMAN —Your claim on them is that you are entitled to a share of the Indian income tax now taken by the Government of India on the profits of the railway lines owned by the State but worked by the companies for the State, and also on the income of the employees on those lines?

DEWAN —Yes

CHAIRMAN.—That view has already been rejected by the Government of India

Diwan Bahadur Mr M N KRISHNA RAO —They have rejected it, but we are not convinced of the correctness of their view and we propose to address them again We want our income-tax law to operate over all railway lands within the State.

CHAIRMAN.—That law is more or less based upon the British Indian Income-Tax Act, I suppose?

Diwan Bahadur Mr M N KRISHNA RAO —Yes, but the rates are lower under our law.

CHAIRMAN —Income tax is assessed not on the local profits of the line, I understand, but on the total profits of the line?

Diwan Bahadur Mr M N KRISHNA RAO —It is assessed on the share of profits made on the lines within the State

CHAIRMAN —Did they give any reasons against the interpretation of the term "jurisdiction" in your favour?

Diwan Bahadur Mr M N. KRISHNA RAO.—I would invite reference to page 14 of the memorandum of our replies to the questionnaire, which contains a copy of the letter on the subject from the Resident. The contention of the Government of India is that we have no fiscal rights over railway areas

CHAIRMAN —In regard to Posts and Telegraphs, I understand that the Government of India say that the Posts and Telegraphs are now run on a commercial basis and that the profits that may accrue in any year are to be devoted to the payment of capital charges; this will tend towards a reduction of interest with a view to the ultimate possibility of a reduction in rates, which will benefit the subjects not only of British India but of the Indian States

Have you referred your complaint about the Post Office Savings Banks and cash certificates to the Government of India?

Diwan Bahadur Mr M N. KRISHNA RAO—No. It would be of great [illegible] the State. For instance, [illegible] arrange for the local [illegible]

CHAIRMAN—Have you ever suggested that you should perform the primary functions of a British Indian post office?

Diwan Bahadur Mr. M. N. KRISHNA RAO.—No. We should be glad to perform those functions under any arrangement that may be possible with the Posts and Telegraphs Department.

CHAIRMAN.—Is there anything more you wish to add to the statement of your case on this point?

DEWAN—No

CHAIRMAN.—Under Extradition, do you ask for reciprocity?

Mr BALASUNDARAM IYER—Not reciprocity in general; but there is a special procedure obtaining in Mysore under the Chief Commissioner's notification of 1878, by which Mysore practically forms part of British India so far as criminal courts are concerned. This procedure the State would like to be discontinued Under the present arrangement, any third-class magistrate outside Mysore can issue a warrant for the arrest of a Mysore subject without recourse to extradition proceedings.

CHAIRMAN.—That is to say, you ask that formal extradition should be granted in the case of offences committed by Mysore subjects in British India?

Mr BALASUNDARAM IYER—We would like that notification to be cancelled

CHAIRMAN—This is not a matter which falls within our terms of reference It is a matter which should be referred to the Government of India.

DEWAN.—It seems to me that the terms of inquiry of the Committee are wide enough and include everything relating to the political relations of the States with the Government of India.

CHAIRMAN.—That states your case fully Is there nothing you wish to add to it?

DEWAN.—No

CHAIRMAN.—Do you wish to add anything to the statement of your case with regard to the general financial relations between the State and British India?

DEWAN—Is it not possible to abolish the present system of cash tribute, or at least to arrive at some decision in regard to future fiscal *relations between the State and the Government of India?* The Government of India have recently decided to remit $10\frac{1}{2}$ lakhs of rupees out of the annual subsidy paid to them by the State. But having regard to the fact that indirect contributions by the State are exceedingly heavy, and that any remission granted to the State would be spent for the benefit of the people of the State, it would be a great relief to our finances if the subsidy could be entirely done away with. The settlement of the question of customs and indirect contributions will necessarily take a long time We have some very big development schemes We want money for our University, for rural reconstruction, for sanitation and public health schemes. If a total remission of the subsidy cannot be granted at once, we feel that at least some further reduction might be made at once.

CHAIRMAN.—That is, the Durbar asks that the question of tributes should be treated as a fiscal question?

DEWAN.—Yes.

CHAIRMAN.—On the question of customs, do you wish to elaborate your case?

DEWAN.—We should be glad if a separate arrangement could be arrived at between the State and British India.

Colonel PEEL.—Have you the right to impose internal customs?

Diwan Bahadur Mr. M. N KRISHNA RAO —Yes; in the interests of the economic development of the State the right has not been exercised. The only restriction is that we should not levy, without the assent of the British Government, duties on goods imported for a British cantonment in the State.

CHAIRMAN—You base your claim on the fact that your position is different from that of other States, and that special consideration should be shown to you because of the advanced state of administration in Mysore?

Diwan Bahadur Mr. M N KRISHNA RAO —Yes; and also on the ground that in the interests of trade of Mysore and also of India, we do not impose any internal customs.

DEWAN.—The contributions from the State to British India, direct and indirect, are so heavy that immediate relief is required. We maintain a separate military force which costs us over 6 lakhs of rupees annually. *It is a very well-disciplined and efficient cavalry regiment*, and will serve in the future, as in the past, Imperial purposes. This corps is maintained in addition to the tribute of 24½ lakhs payable annually to the British Government

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Minutes of Evidence recorded before the Indian States Committee at Government House, Mysore.

Tuesday, 20th March 1928.

PRESENT:

SIR HARCOURT BUTLER, G C I E, K C S I., *Chairman*.
Colonel the Honourable SIDNEY PEEL, D S O. } *Members*
Professor W S. HOLDSWORTH, K C. }

Lieutenant-Colonel G D OGILVIE, C.I E., *Secretary*

1st group.
Rev. SAWDAY.

2nd group.
Rajamantrapravina Diwan Bahadur P. RAGHAVENDRA RAO, B.A, B L., retired Member of Council.
Rajasabhabhushana Diwan Bahadur C SRIKANTESVARA AIYAR, B A, B L, retired Inspector-General of Police

3rd group.
Rao Bahadur M. C. RANGA IYENGAR, B A.
Rao Bahadur N. S. NANJUNDIAH.
Mr B NARASINGA RAO
Mr. M. VENKATAKRISHNAYYA.
Mr. H C. DASAPPA, B A, B L.
Mr. S VENKATESIAH, B A., B L.

Rev. SAWDAY.

CHAIRMAN.—Have you been a long time in Mysore?

Rev SAWDAY.—I came out in 1876, so that I have been quite a lon time in the place and have seen all the modern changes.

CHAIRMAN.—Could you tell us your impressions of the general effect of the changes to which you refer? [illegible] have been with [illegible] lative Council of [illegible] ıll tended to the good of the State in every way The State stands now on a different footing from what it did in the olden days.

CHAIRMAN.—Has your work been largely in the town of Mysore or in the districts?

Rev SAWDAY.—My work at first lay on the other side of the country. I lived in a district town called Tumkur But for the last 30 years I have been living in the city of Mysore and working largely in the villages around the city, so that I have been in touch with all classes of people.

CHAIRMAN.—You were here, then, at the time of the Rendition of Mysore in 1881?

Rev. SAWDAY.—Yes.

CHAIRMAN.—Was there any excitement among the people at the time?

Rev. SAWDAY.—I do not think there was any excitement. I think [illegible] retrograde step.

CHAIRMAN.—And it has not been so?

Rev. SAWDAY.—Certainly not.

[illegible] has, I suppose, been [illegible] nsion of education.

CHAIRMAN.—Has that led to any innovation, any movement from the district to the town, or do the people after getting their education return and settle in the districts again?

Rev. SAWDAY.—I should say that the tendency is for the people in outlying parts of the country after receiving their education to drift to the towns; and in the same way those who receive manual education very seldom go back to the villages. They cannot find adequate work in villages

CHAIRMAN.—We were told yesterday that an effort had been made on an extensive scale to reintroduce the old panchayet system. Have you seen any of its working?

Rev. SAWDAY.—To a large extent, I believe, the old panchayet system is at work in the villages, and wherever it is at work you can get really decent responsible men, and it has always proved to be a good thing for the villages. They are able, for instance, by its aid, to settle quietly a lot of cases that would otherwise have to go to the Courts, and would probably drag on for years Lately, of course, there [illegible] ted in the welfare [illegible] mmunications, and [illegible] has been done in [illegible]

CHAIRMAN.—You have given us a picture of very good and successful administration in Mysore There were times in British India in 1920 or thereabout when there was strong anti-British feeling in certain parts of India. Did you find any echo of that here?

Rev Sawday.—Generally speaking, I should think not I think the bulk of the people in the towns and villages are profoundly satisfied But you will always find in every large town a certain number of people who are disaffected and who spread disaffection among others. That is inevitable.

Chairman.—In your work have you found any serious opposition from the people themselves?

Rev Sawday.—We never expected the people to take very kindly to our work At the same time, I must say that I live on terms of the utmost friendship and affection with the mass of the people and officials and non-officials

Chairman—Is there anything you would like to say to the Committee on your own initiative ?

Rev. Sawday—With your kind permission I should like to say one or two words more. Firstly, with regard to customs duties, I think that some change ought to be made. It seems to me that at the present time, if I may say so, the Imperial Government gets all the advantages, and Mysore, possibly owing to the abolition of the frontier duties, gets compa [illegible] be some change [illegible] Government, althc [illegible] recently announce [illegible] readjustment in this respect also, and that, instead of the subsidy, the State should only be required to bear a proportionate share of the cost of the defence of the country. Conditions have changed so much recently that the general feeling is that there is no justification now for this payment.

Chairman—Have you heard this matter discussed by the people ?

Rev. Sawday.—Yes ; sometimes it comes up in conversation.

Colonel Peel—Would it not be a mere change in name if you substitute something else for the subsidy ?

Rev. Sawday.—It would be a change in name, I can quite understand. But possibly to the Government of His Highness the Maharaja the term "subsidy" is rather objectionable in these days.

Before I withdraw, I should like to express my profound admiration of His Highness the Maharaja and of the way in which the government of the country is conducted.

Rev. Sawday then withdrew and the second group of witnesses entered.

Diwan Bahadur P. Raghavendra Rao, B.A., B L.
Diwan Bahadur C. Srikantesvara Aiyar, B.A., B.L.

Chairman (*addressing the second group of witnesses*).—Well, Gentlemen, it is a great privilege to us to be able to have the benefit of your experience. I understand you have been long in the service of the State ?

Diwan Bahadur P. Raghavendra Rao—I was 34 years in service, and then retired as a Member of the Council.

Diwan Bahadur C. Srikantesvara Aiyar.—I was in service for almost 40 years. I was Inspector-General of Police for four years. Since my retirement I have been doing honorary work here

Chairman.—Both of you have seen the birth, growth and development of the Representative Assembly and the Legislative Council. As experienced men and statesmen, will you kindly tell us how these institutions have worked in practice ? Have they worked well ?

Diwan Bahadur C. SRIKANTESVARA AIYAR.—To the extent they have been permitted to do so, they have worked well.

CHAIRMAN.—The Legislative Council now has powers very similar to those enjoyed by the British Legislative Council?

Diwan Bahadur C. SRIKANTESVARA AIYAR and Diwan Bahadur P. RAGHAVENDRA RAO.—Practically so.

CHAIRMAN.—That is to say, it has powers of voting on legislative measures, of asking questions, of moving resolutions on its own initiative, and it has the power of discussing and passing the budget?

Diwan Bahadur C. SRIKANTESVARA AIYAR.—Yes, subject to certain reservations in the case of the budget. It can deal with any subject except those relating to the relationship with the British Government, the Military Department, and the railways, which are not worked by the State.

CHAIRMAN.—That is, all matters in which the State is in relation with the British Government?

Diwan Bahadur C. SRIKANTESVARA AIYAR.—Yes.

CHAIRMAN.—What did you have in mind when you said that, so far as they could, these institutions have worked well, and what are the restrictions you had in mind?

Diwan Bahadur C SRIKANTESVARA AIYAR.—So far as the Representative Assembly is concerned, the idea was to bring the people's views directly before the Government. The representatives came in to put forward whatever they wished and wanted, and the Government placed before them as a sort of consultative body what they were going to do in each year. For a very long time, and in any case as far as consultation went, both the people as well as the Government were satisfied. The Government could hear directly from the representatives what the people wanted and the people were satisfied. But the representatives had no powers of initiative or voting. For the past four years, however, we have given them larger powers, such as the right of interpellation, and a voice in the budget and in legislation. The limitation I had in my mind was that the Representative Assembly, as at present constituted, is not quite fitted to effectively discharge its new functions satisfactorily.

Diwan Bahadur P. RAGHAVENDRA RAO.—The Representative Assembly was in the old days an annual assembly for the people to make representations to the Government. The members were representative in the sense that they represented local areas. But they were selected by local officials, and not elected; they made representations, some of a general nature and some of a local nature. But the House was not a constitutional body; it owed its existence to an executive order of Government It is only since 1924 that the constitution of the Representative Assembly has been changed.

CHAIRMAN.—That is to say, for the old Representative Assembly, which owed its origin to an executive order, another modern body has been superimposed which is based on a statute and the members are returned by electorates instead of being selected as formerly. But how about these electorates? Has education spread largely in the electorate?

Diwan Bahadur C. SRIKANTESVARA AIYAR.—Very largely. A large number of schools and colleges have been opened. In place of the 20 lakhs of rupees which we previously used to spend on education we are now spending 50 lakhs. As the people come to realise the advantages of education this process will go on. Our principle is to take the people along with us as far as possible and trust them.

Diwan Bahadur P. RAGHAVENDRA RAO.—They have also been getting a certain amount of education in self-government. Formerly they had Taluk Boards and District Boards, and now they have Village Panchayets. They have now done away with Taluk Boards The people who now come to the Representative Assembly are in a sense better educated men than was the case 20 years ago.

CHAIRMAN.—Have you a "free Press," as it is called, in Mysore?

Diwan Bahadur C SRIKANTESVARA AIYAR.—Yes, we have a free Press But a licence must be taken out before a newspaper can be published. For this they have to pay a very small sum—in fact, a nominal sum. They think that even that is unnecessary

CHAIRMAN —Does the Press circulate freely?

Diwan Bahadur P. RAGHAVENDRA RAO.—Yes, absolutely There is a very large circulation of vernacular newspapers. Even the Wesleyan Mission issues a paper which is to be found in a very large number of villages.

CHAIRMAN.—Is there a Publicity Department in the Government?

Diwan Bahadur C SRIKANTESVARA AIYAR —We have had one for the last two or three years, just to correct misrepresentations

CHAIRMAN —How do you correct misrepresentations? By issuing a paper of your own or by means of press communiqués?

Diwan Bahadur C. SRIKANTESVARA AIYAR —By means of press communiqués

CHAIRMAN —You are aware of our terms of reference. The first portion relates to the relations between the Paramount Power and the States. The second part deals with certain economic and fiscal questions, and the manner of satisfactorily settling differences of opinion in regard to them between the States and British India Does your experience lead you to make any observations in regard to either part of our terms of reference?

Diwan Bahadur C. SRIKANTESVARA AIYAR —I have been practically a Secretariat Officer for a very long period, and I have consequently been in close touch with the administration. Do you wish me to speak from my own point of view or that of the Mysore Government?

CHAIRMAN.—We would like you to speak as you like.

Diwan Bahadur C. SRIKANTESVARA AIYAR.—Our relations with the British Government have been the happiest possible, though there may have been occasional instances of differences of opinion At the same time we sometimes find it difficult to get specific questions solved by the British Government, for the simple reason that with the present constitution of the Government of India we have no means of directly approaching the persons concerned and getting the question solved in a satisfactory manner. Our representations all go to the Government of India and there the question goes through so many Departments. For instance, take the question of income-tax on railway profits. First of all it goes to the Railway Board. They say it is a political question which concerns the Political Department. When we take it to the Political Department the latter say the Finance Department is concerned, and then somehow or other the question goes to the [illegible] le thing goes in a circle, and we [illegible] The fairest way we can think [illegible] be for purely State questions to be dealt with by some special agency, I mean purely domestic matters, at any rate, without reference to the British Indian Legislature. As far as questions of common interest are concerned. such as fiscal matters, or matters affecting both the State and British India

we would prefer that the Viceroy should decide such matters himself, for we would prefer to trust the Viceroy in his personal capacity rather than the Government of India But he is so much handicapped on account of want of time that he cannot be expected to deal with all the 540 or more States at one and the same time. He would require some kind of assistance, some agency which would thrash out all these subjects and tell us as early as possible the results. After all, at present, it means purely Paramount Authority on the one side and the States on the other side When we come to understand each other's view point, a good deal of misunderstanding can be removed. [illegible] must have some kind of voice in the [illegible] that is to be brought about is a very [illegible] British sagacity would be able to solve when the reforms are introduced, and we would like to wait till then. There are so many ideas put forward and so many schemes suggested; but none of them solves the question of individual States. It is practically impossible to mix up the States together. Each State would necessarily have to be dealt with separately on its own merits.

CHAIRMAN.—Your evidence amounts to this: You would like quicker decisions on matters affecting only your own State. You would like such questions to go only to one Department of the Government of India, to go straight up to the Viceroy. But you realise that there are certain questions which affect not only your State but also British India as well as other States, and for that some machinery has to be devised which will really depend on the recommendations of the Simon Commission. Until the Simon Commission has produced a Scheme for the future of British India, you would rather like the States to wait and see?

Diwan Bahadur C. SRIKANTESVARA AIYAR.—Yes.

CHAIRMAN—Is there anything more that you would like to say to the Committee on your own initiative?

Diwan Bahadur C. SRIKANTESVARA AIYAR—I should like to touch on one or two subjects by way of illustration For instance, there is the Bangalore Civil and Military Station It was originally given for a specific purpose, that is, for military purposes. But latterly a big civil population has grown up there. For four or five years after the Rendition we administered the territory so far as civil matters were concerned Then all of a sudden, by an executive order of the Governor-General, it was treated as an altogether separate Department. We have been trying to get the Civil Administration back into our own hands. The people are ours, the land is our own. We could administer it in the same efficient way as we did before, and look after the military interests in every respect and in accordance with the advice of the British Government. The question has engaged our attention for some time. Our anxiety has been that a white population is fast growing up in the Cantonment area, and the State is being taxed for their benefit. It is rather awkward that the State should be taxed for their benefit.

CHAIRMAN.—That is a matter to be settled with the Cantonment authorities, under the Cantonment Act. The State has a separate Agreement, I believe, in regard to this matter.

Diwan Bahadur C. SRIKANTESVARA AIYAR.—The next question is that of subsidy. We feel that it is rather hard on us to continue a [illegible] Especially [illegible] the subsidy [illegible] subsidy, we

are maintaining a military force for Imperial purposes Our expenditure on this account is nearly 20 lakhs per annum, and we have been very anxious to improve it. As a matter of fact, in the late war, His Highness offered the man-power of the State—in fact, everything that was practicable in the way of military resources. Under these circumstances, if a more mutually satisfactory arrangement could be arrived at, and the subsidy, which we consider as a slur on us, could be entirely abolished, we would be satisfied

CHAIRMAN.—So your objection is not so much to the actual amount as to the term "subsidy."

Diwan Bahadur C SRIKANTESVARA AIYAR.—The actual amount is also something. Then there is the question of customs By the imposition of customs duty we practically lose 50 to 70 lakhs a year. In fact, we contribute to the defence of the Empire in the same way as the British Indian Provinces do, except in the matter of income-tax; for instance, we pay taxes on salt, articles of food, machinery, in fact everything that comes into the State, but it brings us no return

CHAIRMAN.—Neither do the provinces in British India get any share *of the customs revenue.*

Diwan Bahadur C. SRIKANTESVARA AIYAR.—But where is the necessity of our paying for the defence of the country more than the provinces do?

CHAIRMAN.—Because of the agreement of the State to pay for the defence of the country in return for the protection which they receive from the British Government against external aggrandisement.

Diwan Bahadur C SRIKANTESVARA AIYAR.—For that we pay by keeping up the Imperial Service Troops If we had our own freedom in these matters we would naturally get some portion of the customs revenue for the State.

CHAIRMAN.—Do you pay Imperial income-tax here?

Diwan Bahadur C. SRIKANTESVARA AIYAR.—No, but with this exception we pay practically every other tax

Diwan Bahadur P. RAGHAVENDRA RAO.—So far as personal matters are concerned, the relationship between the State and British India has always been most friendly But as regards fiscal and quasi-legal matters, I think there has lately been some difficulty Whatever may have been the case in the past, there have been occasions lately when it was impossible to get a patient hearing But the changes that are taking place in British India of recent years and changes that may take place as a result of the Simon Commission make us apprehensive that the position, so far as the Indian States are concerned, may be very much worse in the future. Taking the legal matters, there are certain specific cases—for instance, the damming up of the waters of the Cauvery—in which our interests conflict with those of the British Indian Government This particular question went to a considerable length and in the end the result was not satisfactory to either party concerned. Madras had their own Mettur Scheme, and we had our own Scheme. We started the work, but they were unable to go ahead, and we had practically to come to a standstill in the middle till a compromise was effected and we could go on with the work. In matters like this we would like to have fairly quick adjudication on the merits of the case.

So far as fiscal matters are concerned, such as banking, currency, tariff rates, telegraphs, and to a certain extent railways, the position has become very complicated indeed. The most potent voice in British India is the Legislative Assembly. The Council of State and

the Viceroy have no doubt the power of certification. Still, it is not every time that the Council of State can possibly veto what the Legislative Assembly has decreed, and perhaps the Viceroy finds it awkward on all occasions to restore under his powers of certification demands which have been rejected by the Assembly. These are matters in which the Indian States have as much concern as the British Indian Provinces. Hitherto, when the Legislative Assembly was not in existence, it was for the Government of India, when representations were made to them by Indian States, to try to redress their grievances as far as possible. Now it depends on the goodwill and the attitude of the Legislative Assembly, in which the Indian States are absolutely unrepresented. What is to be their fate? As judged from the speeches made in the Legislative Assembly from time to time, the attitude of the non-official members is not one of particular friendship to Indian States. There are States which can hardly lay any claim to satisfactory administration. Are these to be clubbed together along with other advanced States such as ours and treated on an equal footing with them?

CHAIRMAN.—Your point is t[illegible] owing to the growing power of [illegible] are not represented and which [illegible] an advanced State like Mysore should be treated differently from the less advanced States?

Diwan Bahadur P. RAGHAVENDRA RAO.—It may be very difficult to make a differentiation between States and States; but a State like Mysore with an annual income of 3½ crores cannot be equitably classified with a State 15 square miles in area and with an income of a few lakhs of rupees.

CHAIRMAN.—Your main point is that you are apprehensive of the future, and that you claim that Mysore requires and should have special treatment?

Diwan Bahadur P. RAGHAVENDRA RAO.—That is the real crux of the problem. In British India they have got their own representatives and they may do anything they like. But we have no voice. How long are we going to allow ourselves to remain in this condition and be subject to taxation in the levy of which we have absolutely no voice? If it was only the Viceroy and the Government of India we could have made representations to them, but when it is a matter which centres in the Legislative Assembly and has to be agreed to by the Council of State and sanctioned by the Viceroy, even if we made representations it would be exceedingly difficult for any power to come to our help.

CHAIRMAN.—Your grievance is, I understand, only in regard to the matter of customs.

Diwan Bahadur P. RAGHAVENDRA RAO.—Chiefly it is that, but there is also the currency question. We have no mint of our own, and consequently no profits on coinage. The exchange rate of the rupee was changed from 1*s*. 6*d*. to 1*s*. 4*d*. and we lost heavily, as a good deal of our payments and realisations are made in London. We are losing lakhs of rupees every year; but we have no voice in the matter.

Colonel PEEL.—Even if you had a voice in the Legislative Assembly, it would probably have been of no avail.

Diwan Bahadur P. RAGHAVENDRA RAO.—It might have been a cry in the wilderness, still we would have had the satisfaction of having been heard and being overruled. But now practically we are not heard at all, and we feel it. As the days go by and democratic feeling in British India grows, the position of the Indian States, however well-

governed they may be, and however contented the people, will be extremely delicate and inconvenient, if one can judge by the march of events during the past 10 years.

Colonel PEEL.—Supposing you had two or three members on the Indian Legislative Assembly, would you be much better off then? As you say, your voice may be a cry in the wilderness.

Diwan Bahadur P. RAGHAVENDRA RAO.—It is just possible that we might be able to get a few adherents, and get our scheme through. We do not know what the future of British India is going to be. I would only lay stress on the point that we should have a voice in our affairs. How best this can be done is a matter largely for the Simon Commission to decide. Still, what we really want to impress upon the Committee is the present anomalous state of affairs, the hardship which we have been experiencing and the way in which our feelings have been ignored in the past, and we ask that this state of things should be remedied.

Diwan Bahadur C. SRIKANTESVARA AIYAR.—May I be permitted to say a word or two about provincial autonomy? In a way the States might be called autonomous provincial governments for political purposes. But the provinces never had autonomy. The present idea of the reforms is to give them autonomy as far as is practicable. But so far as the Indian States, particularly a large State like ours which has achieved so much progress and which has all along been autonomous under hereditary rulers as it were, are concerned, any idea of bringing it down to the level of provincial autonomy would be inconsistent with the idea of sovereign rights. It is such a complicated subjec [illegible] ereignty to the c [illegible] treat them alike [illegible] State, and in fact all advanced States, should be looked upon as forming a class of their own.

CHAIRMAN.—You mean there should be a special examination of these problems in regard to the State of Mysore with reference to local conditions?

Diwan Bahadur C. SRIKANTESVARA AIYAR.—Yes. We have had 50 years of British administration and we are now completing the 48th year of our administration. We have progressed much on the same lines as British India. To try to club us together with other States who are less advanced would be to treat our Sovereign here on the same footing as the other less important Princes.

Diwan Bahadur P. RAGHAVENDRA RAO.—Just one word more before we finish. Whatever the feeling in other Indian States may be, speaking for Mysore, I do not think it has ever been the intention, or is likely to be the intention, for Mysore to interfere in any matters which are wholly British Indian. If we do have a representation—should a general representation not be possible for any reason—we should like to have representation in matters in which Indian States are concerned. We have absolutely no intention of interfering with purely Indian questions. That is a point which I would like to make perfectly clear.

CHAIRMAN.—You want them to leave you alone and you want to leave them alone?

Diwan Bahadur P. RAGHAVENDRA RAO.—Yes.

CHAIRMAN.—Thank you, gentlemen, for your interesting evidence.

(The second group of witnesses then withdrew, and the third group entered.)

Rao Bahadur M. C. RANGA IYENGAR, B.A.
Mr. B. NARASINGA RAO
Rao Bahadur N. S. NANJUNDIAH
Mr. M. VENKATAKRISHNAIYA.
Mr. H. C. DASAPPA, B.A., B.L.
Mr. S. VENKATESIAH, B.A., B.L.

CHAIRMAN.—Gentlemen, we are glad to meet you and we shall be glad to hear anything any of you have got to say. I wish to know whether you are prepared to give evidence one by one or whether one of you will voice the views of you all.

Rao Bahadur M. C. RANGA IYENGAR.—As you please, Sir. On most questions we are agreed as to what we should represent

CHAIRMAN.—Some one of you might give evidence on matters in which there is agreement; then after that any gentleman who wishes to give evidence on any other part will give it. Who will speak on the matters in which there is agreement?

(Rao Bahadur M. C. RANGA IYENGAR was chosen as spokesman.)

Rao Bahadur M. C. RANGA IYENGAR.—I will try to give my views upon certain matters on which we see eye to eye with one another.

Mysore is a progressive State. Our Ruler is a Constitutional Ruler. Public opinion is respected by the Government and to a great extent given effect to. There are so many important schemes which have been devised by Government for the development of the economic condition of the people: but for want of funds they have been held up. We want the taxes and certain other sources of income which go from Mysore to the British Indian Government exclusively to be given back to Mysore. For instance, the customs duties, duty on salt, profits on coinage and various other items. It is roughly calculated that on the whole a sum of Rs 120 lakhs is contributed by the people of Mysore to British India in the shape of indirect contributions.

CHAIRMAN.—So you wish that the income derived by the Government of India from the Mysore State through the customs, profits on currency, posts and telegraphs, salt, &c, should be made over to the State?

Rao Bahadur M. C. RANGA IYENGAR.—Yes. And there is the question of subsidy also. I am sure, Sir, you are acquainted with the history of the subsidy in Mysore, and I do not wish to take up your time by going into its details We want the subsidy to be abolished. We are very grateful to the Government of India for having recently remitted Rs. 10½ lakhs of the subsidy. It has been a very material addition to our resources; but I believe that the Mysore Government have a very good case for asking the British Government to excuse the payment of the subsidy altogether.

Then there is the question of jurisdiction over the civil portion of the Military Cantonment in Bangalore. According to the treaty, the Mysore Government are bound to give the land required for military purposes, and that they have done. The administration of the civil portion of the population is also in the hands of the British Indian Government My submission is that the civil administration ought to be restored to the Mysore Government. The civil population in the cantonment area are also anxious that they should be brought under the Mysore Administration. The leading gentlemen of the area to whom I have spoken on the subject expressed the opinion that they would prefer to go back to the Mysore Administration As it is, their position is very anomalous. It is neither flesh nor fish nor red herring. For certain purposes they are British subjects and for certain other

purposes they are regarded as the subjects of the Mysore State. Originally, in civil cases, appeals from the decisions of the Cantonment Civil Judges lay with the Mysore Chief Court. That has been taken away, and now the British Resident is the appellate authority. But the people in the Civil and Military Station wish the Mysore Chief Court to be their appellate court. British subjects in the cantonment have the right of appeal to the Madras High Court, but Indians have no such rights.

Then there is the question of jurisdiction over the railway lands which have been given over to the Railway Companies. The present policy involves a good deal of hardship, not only to the Police Department, but also for the people. The jurisdiction over these railway [illegible] further disability [illegible] the jurisdiction [illegible] e at Bangalore. We are not allowed to collect the income-tax in those places Because land is given for a particular purpose, it does not follow that land is given free for all purposes. We must have the right of levying income-tax from that area. That will be a substantial addition to our income.

These are some of the subjects over which we are in entire agreement and there are a few subjects on which there are differences of opinion: e g. what should be the relation between Mysore and the Government of India after the introduction of further reforms? We should like to have our position clearly defined. The people of Mysore wish to urge some points for consideration, if permitted

CHAIRMAN.—Yes You can proceed.

Rao Bahadur M C. RANGA IYENGAR —From what we hear, though not from very authentic sources, from certain organs of the Indian Press, we imagine there is going to be something like a Federal Government in the near future. If such a Government is established, then the position of Mysore will have to be considered I am speaking particularly of Mysore, because in Mysore we have got an administration which is almost on the same lines as the British Administration. We have had the good fortune for a period of 50 years of the direct administration of Mysore by the British authorities prior to the Rendition, when the foundations of good government were laid What we have been doing since the Rendition of 1881 is merely improving [illegible] en established in Mysore We [illegible] footsteps of the British Indian [illegible] Government is not responsible to the popular Assembly or the Legislative Council, still the people's voice is respected, and it is possible for them to influence the policy of Government. In these circumstances, I think that in any federal government which may be set up in India the people of Mysore ought to be given an adequate representation.

There may be differences arising from time to time between the Mysore State and the adjoining British Provinces of Bombay or Madras. When disputes arise between them it may be necessary to devise a tribunal competent to dispose of these differences. Though there is provision for the appointment of arbitrators, it seems to be optional now, and the tribunal of arbitration may or may not be approved by the Viceroy. So the tribunal of arbitration must be made obligatory or a Supreme Court may be established to dispose of these differences If an Arbitration Court is established, the contending parties may appoint the arbitrators or the Viceroy himself may appoint a tribunal.

Two other points to which I can refer, with the approval of my friends here, are:—

(a) For some time past we have been trying to secure a sea-port at Bhatkal, and I request that our desire may be favourably considered by the Committee.

(b) With regard to extradition, there is no reciprocity now. While a warrant issued by a British Indian Court is executed here, we are not allowed to follow the same procedure. So there should be reciprocity in this matter.

Rao Bahadur N. S. NANJUNDIAH—I should like to submit that *Mysore is a progressive State, not only in the Central Administration*, but also in matters of local self-government. We have reached the villages in the matter of administration by the constitution of village panchayets, by giving them larger powers in matters of taxation and local autonomy; likewise, by the devolution of powers on the District Boards and Municipalities presided over by non officials appointed by the Government, and in some cases by non-officials elected by the people. I have been connected with the administration of District Boards and Municipalities for about seven or eight years, and in the course of this period I can safely say that we have been able to make much advance in matters of sanitation, medical relief, drinking-water wells, communications, including roads and bridges, and primary education, and we find almost every day that the Government is very helpful to us and gives us the necessary encouragement, and that Mysore is making rapid progress in local self-government, which is our ultimate aim. Consequently, in any federation that might come into existence in course of time, Mysore should not be made to suffer on account of other backward Indian States. I should like to submit that there are States and States, Administrations and Administrations, and Mysore being a progressive State, where the Ruler is working day and night for the welfare and the happiness of the people and where the Government is more or less always anxious to promote the happiness of the people, it should not be classed along with other backward States of India, but it should be treated as any British Indian Province.

Mr B NARASINGA RAO—So far as matters of local self government are concerned, I have nothing more to add to what Mr. Nanjundiah has said. Mr. Nanjundiah is an elected President of the District Board of Hassan as well as of the Hassan town municipality. He provides an example showing how our country is ruled by His Highness the Maharaja in respect of encouraging the non-official element, particularly *in the administration of local self-government matters*. We have got non-official Presidents in the Bangalore and Kolar districts also.

Regarding post and telegraph offices, the income and expenditure, so far as I know, very nearly balance. Our purpose is very well served by the Postal Department. All that we want to emphasise now is that the [illegible] undertaken by t[illegible] which they wor[illegible] concerned, as t[illegible]ts might go to the Mysore Government So far as the Mysore State is concerned, the Postal Department might discontinue the Savings Banks and the Cash Certificates portion of their work and allow the State to run that business. We have got our own Savings Bank system working in opposition to the Postal Savings Bank system. To avoid all this conflict, either they should discontinue it or they should do it as the agents of the Mysore Government.

I should like to submit a few remarks, with great diffidence, on matters relating to questions of policy. Under the existing system of Government, disputes are settled by the Governor-General in Council with the help of the Secretary of the Political Department There is no member in the Executive Council exclusively holding the portfolio of the Indian States, and more often than not some cases of conflict arise The Viceroy and the Governor-General cannot give his undivided attention to these questions because he has so many departments to deal with. What the future constitution of India will be—whether there will be ministers or whether the existing state of things will continue—we do not know. Taking the present condition of the administration of the Government of India, I would suggest that there might be one or two members on the Executive Council of the Viceroy who should look entirely to the questions relating to the Indian States and their administration, and when questions pertaining to a particular Indian State, over which there is some dispute, have to be settled, a certain amount of representation to the State affected ought to be given, so that the State might go to the Viceroy with the help of the Executive Council member and present its case. Not by always forcing votes to be taken, but by personal conversation and by representing the view point of the State, they might come to some kind of satisfactory conclusion At any rate, our voice must be heard For instance, so far as the customs policy is concerned, the Government of India were getting about 10 crores some time back, for the last three years the income has risen to nearly 50 crores We have had no hand in the shaping of this policy. On the other hand, as there was an increase in customs revenue, our State, which contains about $\frac{1}{50}$th of the population of India, has also proportionately contributed to this increase. Secondly, in connection with cotton excise duty, all of a sudden it was abolished by the Government of India and we lost a lot of revenue because we were also compelled to abolish it There are various other things What we want is that at least our views may be obtained in matters affecting the States before suddenly changing the policy

So far as Mysore is concerned, I may say in one word that the interests of the Ruler and the people are identical. Most of the officers are our own officers Mysore has specially had the advantage of having very eminent Dewans. Some of them were very patriotic and our present Dewan is one of them But yet, because of the difficulty of funds, schemes of further improvements are held up Educational and industrial progress go hand in hand all along and it is impossible to say halt. Considering all these things, I think the subsidy should go and we ought to get the share to which we are *justly entitled in respect of customs, &c.*

There are some questions pertaining to all the States Do you expect me to say anything generally regarding the Indian States?

CHAIRMAN.—I think not unless you have experience in regard to other States

Mr M. VENKATAKRISHNAIYYA.—I endorse most of the statements made by my friends who spoke before me. I have only to say one or two words about the obligations of the British Government to the Indian States It is the policy of the British Government to train the Indian Princes to do full justice to their subjects, and it has been held to be the policy of the British Government to see that whenever any Prince comes to the throne he ought to be so well educated as to undertake the responsibilities of the State. Mysore is now considered to be a premier Indian State and a model State. We have in My:

the Representative Assembly, the Legislative Council, local self-government institutions, like the District Boards, and village panchayets, and a number of institutions on the lines of British India. Our educational institutions are in no way inferior to the institutions elsewhere They rival the institutions even of British India. All this is due to the paternal solicitude that the British Government have shown towards the welfare of the subjects of the State. That is our good fortune If you take a survey of what obtains in the other Indian States you will find that the case is altogether different. If the foundations of the British Empire should be well laid, all the Indian States should be made to walk in the footsteps of the British Empire. It is nearly 320 years or so since we came into contact with the British, but I am afraid that most of the Indian States are in the same condition in which they were three centuries ago. I very well remember that 60 years ago, when the British administration was going on and when the rendition of the State was about to be undertaken, we were decidedly as good as British India.

The history of Mysore during the pre-British days was horrible; that we must acknowledge And with all the faults of the British Government, we are now living in a golden age What I want to say is that the British Government ought to be a little more alive to the obligations that they have undertaken There are so many pledges given by Her Most Gracious Majesty Queen Victoria and sanctioned by the British Parliament. In most of them you have done a great deal, but at the same time a great deal remains to be done.

A number of disputes arise between the Indian States and the adjoining British Government, and in all these cases there should be an arbitration court to settle the dispute. We have British Residents and Political Agents Some of them are very good, but some of them are wanting in goodness. It is necessary that whenever a question relating to an Indian Prince is in dispute, he ought to send his representative and the Viceroy's Council should give a hearing to the representations made by the State's representative Unless some such attempt is made, the great prestige that the Government has established will suffer.

Peace was something unknown before the British came here. After they came here there has prevailed peace all over India. This we should not risk. If the British Government is alive to a sense of its paramount duty, they should educate the Indian Princes and make them constitutional rulers. Advice which the greatest political philosophers cannot even approach has been given by Lord Curzon in his speeches in Mysore and Gwalior. That advice ought to be inculcated in the blood corpuscles of the Princes. They should be made to translate into action the philosophy embodied in those political sermons. Unless that step is taken, I do not think that the foundations of the British Empire will be laid on solid ground. This is one of the most important things.

All that I pray for is that the Government should always think about its duty to the subjects of the State. Princes will take care of themselves; they have got their own Chamber; but it is the people that suffer and their interests require to be safeguarded. For instance, when a Viceroy or other high officer goes to any of the Indian States, they see something grand almost approaching to a paradise. But behind it we find greatest misery. So appearances are deceptive. If you, for instance, compare the rate of mortality in London with that in Mysore or for the matter of that in any other State of India or British India, you will be simply stunned, Things

appear to be very grand, but there is something rotten to the core behind. This must be remedied.

Before closing I want to bring to the notice of the Committee that even before the Indian National Congress was started we had our Representative Assembly here, and with the extension of more liberty to the people the country is sure to advance.

CHAIRMAN.—Thank you very much. I gather you are all quite satisfied with things in Mysore?

Mr. H. C. DASAPPA.—Sir, I think in the history of the Indian Empire we have not had a more glorious movement than we are privileged to witness to-day, namely, bringing all the Indian States into a line with the rest of British India.

If we have, as you have seen, Sir, been speaking so much about the advancement and progress made in Mysore, it is just to make out a case that in attempting to solve these problems we should not be in any way dragged down because of the backward condition of other States It is just that fear that has induced us in a way to be boastful of our position I think this is pardonable pride on our part, and you will kindly take into consideration that in any scheme that you may devise, sufficient latitude may be given for the full and free development of the State of Mysore That is just the object why we are keen that we should not be clubbed together.

I may also draw your attention to matters fiscal We are an inland State Our scope for increasing our revenue is altogether limited, as the main source of revenue is land revenue You will see that it is impossible to enhance that item of revenue without serious detriment to the improvement of agriculture The elastic revenues are the customs revenues and the income-tax, but we are in a disadvantageous position so far as the customs revenues are concerned Consequently, development has not been possible in many of the departments, notably education, sanitation, medicine and communications I am sure you will have already seen the sanitary conditions of the Mysore city We may be better off in that respect than most parts of British India, but [illegible]
the city. [illegible]
epidemics.

I am drawn from the raiyat classes My community is purely an agricultural community in the State There has been a great awakening among the people and a craving for education. But unfortunately, for lack of funds we have not been able to make adequate progress and the little progress that we were able to make has been from the realisations of the education cess. Our people are very heavily taxed. Our earning capacity is much less than that of our neighbours in British India. Therefore it is that no development is possible in any direction. I think in many respects our departments are in advance of the departments in British India. I can even say that our constitution is in advance of the constitution in British India, because we have the Representative Assembly wherein there are 250 members who directly approach Government and place before them the views of the public whom they represent. The language of the Assembly is Kannada Though, of course, they have no powers of legislation, yet they are given an opportunity of consultation. They bring forward interpellations, take part in general discussions on the budget and move resolutions. When I see that there is this kind of awakening in the people, and there is no possibility of educational development, that creates a situation which will lead us I know not where. In order to make primary education in the State free and

compulsory (a course of four or five years), we want about 40 lakhs of rupees We have just enacted the Elementary Education Act, and it [illegible]

[illegible] i e. 16 lakhs It was asked by some people how the Government could find the 24 lakhs of rupees unless it be by further taxation. I think this is extremely unfair Government would be killing the goose that lays the golden eggs by imposing additional taxation. When we approach Government they sympathise with us, but they have no funds to help us, so that we are seriously handicapped.

After all, our demands are perfectly legitimate and reasonable. I do [illegible] contributions which we [illegible] So it is hoped that [illegible] make in this behalf will be retrospective in their effect. Or they may provide for it at least to the extent of a moiety. To put it fairly, it ought to be given some kind of retrospective effect. It is not that we are wanting in precedents. We got the surplus revenues of the civil and military station given back to us with retrospective effect.

With regard to railway jurisdiction, there is one question In the *questionnaire issued by the Committee, it is said that the through routes* have to be excluded from the independent jurisdiction of the Indian States There, again, I must submit that there is no reason why there should be any exception made so far as this State is concerned. It would, no doubt, be utterly impossible in cases of lines running through small States. So far as our State is concerned, lines of handsome length pass through it, and you will have seen that our administration is quite efficient. We have got an efficient Railway Department, and you can be absolutely sure that in case jurisdiction over these lines is also given to us your interests will be absolutely and adequately guarded. You need have no doubt with regard to this point. I must also submit that the recommendations in this respect do not go far enough in our interests. I do not know why the Bangalore-Guntakal and Bangalore-Bowringpet-Kolar lines should not be in our hands. We can assure you that our administration will be as efficient as the administration of the companies, and also that we would give you every facility, without any kind of recalcitrant behaviour on our part. We will fall in with your views and will be ready to help you in times of need.

The word jurisdiction has been subjected to a lot of interpretation, and I believe there has been a Privy Council decision on it to the effect that full jurisdiction does not mean civil or criminal jurisdiction alone, [illegible] Beyond that it does [illegible] lines are concerned, it [illegible] ght whatever to get [illegible] our own lines.

[illegible] have considerably changed, and [illegible] enemies is no longer so pressing [illegible] as we had turbulent neighbours But now, there is no such thing at all. We are grateful to the British Government for the reduction recently announced in the subsidy. A further reduction of the subsidy from the point of view of Imperial Government would be paltry, but from the point of view of the State it would be a gracious boon. After all, the total loss to the Imperial Government by the remission of subsidies would be about 120 lakhs, which is a negligible sum so far as the Imperial revenues are concerned.

The suggestions made by Mr. Narasinga Rao, viz. attaching one or

two members to the Executive Council of the Viceroy and the Governor-General to be in charge of the Indian States, &c., were meant to be only temporary expedients The ideal should be a Federal Chamber, where with regard to all-India questions such as customs, defence, &c., we should have as much voice as the British Indians. Whether the Council of State should be converted into a Federal Chamber is a matter which should be left for future decision. I quite conceive the difficulty just now in having a Federal Chamber as a purely temporary expediency. The idea of having a State Council of six members elected from the panel of the Chamber of Princes is not very inviting from our point of view. With regard to having two diplomatic members from abroad, even there, there is no good case made out Besides, there is the fear of conflict, jealousy and all these things, and it is not quite safe that we should trust ourselves in the hands of these members. Therefore it is that we have to be cautious As a temporary expediency, two members on the Council of the Governor-General may be appointed, and I might also add that one of the two must be from the Indian States. I heartily support the establishment of a Supreme Court which must form part of the constitution.

Mr. S. VENKATESIAH —In regard to the incidence of external taxation, that is, customs, &c, I need hardly add anything to what has already been said With reference to the subsidy, I should like to urge that we feel it keenly in two ways not merely in its financial aspects, but on the implication of subordination and inferiority while we are talking of Imperial partnership. With modern ideas of Imperial citizenship there is no room for ideas of feudal servitude, and the subsidy ought to go as a matter of fact and for dignity at least.

I believe I appreciate correctly the feelings of both the Government and the people of Mysore when I say that while we are anxious and as strong as anybody for the autonomy of the Empire as such, we fully realise the implications of Indian unity and the common interests of India and do not wish to get away from them It it is so and the subsidy goes away we fully recognise the obligations of common defence and for common federal subjects such as transport, foreign relations, posts and telegraphs, &c We are prepared to take the consequences of Imperial taxation for those purposes with the reservation that when direct taxes may also have to be levied the tradition of autonomous sovereignty in cases like that of Mysore should be taken into account, and this can be done by the States being allowed to act as agents of the Federation within their territories. Short of such direct interference within the State, we should be prepared to take the consequences of the situation, viz contribution for defence and general purposes along with the right of sharing in customs and such revenues In any case, we believe we are at present actually paying much more than the British Indian subjects I understand they pay for defence only 25 per cent of the total Imperial and provincial revenues, while our share of the customs, &c, together with the subsidy, comes to somewhere between 35 to 50 per cent of our revenues according to different calculations Taking into consideration the fact that our revenue is about 320 lakhs, it will have to be divided into income from taxation and income from property—some of the latter of a capital nature and some of adventitious character—and the calculation sometimes comes up to 50 per cent. If that is so, our contribution for general purposes is out of all proportion to the contributions of British India. I think it will be conceded that the income and the tax-paying capacity of the people here is less, for the reason that all the profits of foreign trade go to merchants in British India, as we have not got a seaboard and have no export houses here. In these

circumstances, we have got a very good case, not merely for the total remission of the whole subsidy, but also for a share in the customs, &c, while we are prepared to take the consequences of federal taxation for federal purposes, particularly the liability for defence

With reference to constitutional questions, I will not dwell at length upon them. The question of a Federal Executive has been raised. A Federal Executive would naturally follow the institution of a Federal Legislature and not precede it. Whatever that may be, there would be no room in a Federal Executive for representatives of some interests *vis-à-vis* an irremovable executive acting for others. But that is not to say that there may not be room in that Council for members with a sympathetic cognisance of the conditions and the needs and aspirations of Indian States But representatives charged with sectional interests in a body which is not "responsible" is not right.

Referring to the constitution of the Chamber of Princes, as far as the people are concerned, and so far as public men may judge from pronouncements about it, it does not include the people of the States as such. You are probably aware that our State has never participated in the deliberations of the Chamber. Although Mysore is acknowledged to be the best among the Indian States, alike with reference to International Conference and the Imperial Conferences, we have been *left in the cold This is a fact which the subjects of the State have* not failed to take note of. We claim a voice in all matters commensurate with our position

As one associated with educational affairs, I may say particularly for the University, we are trying our best to be abreast of the times. Particularly in science courses, our University is not in any way behind the others. We have foreign and foreign-trained experts in science as well as other departments The demand for education generally is growing and increased facilities are also being provided.

Referring to experience in the exercise of franchise, we have an electorate with nearly 30 or 40 years' experience behind it with reference both to local bodies and the two constitutional Houses (Legislative Council and the Representative Assembly) on practically the same basis as in British India. The Representative Assembly and the Legislative Council have afforded our public men also like experience in dealing with public affairs They both exercise a large measure of authority and influence. I may compare them with the British Indian Councils, of which I have some little knowledge. There they pass votes of censure, cut motions and the like. The cuts, for instance, in the Legislative Assembly were recently immediately restored. We in Mysore are more accustomed to win our points and the Government is more amenable to our influence. Every year, subjects brought before the Representative Assembly are tabulated and action taken against each is noted. They may be compared to see how far the public opinion here influences the administration. I do not think we need fear any comparison with the British Indian Legislatures.

There is another matter which is probably within the cognisance of the Committee. We have a British Resident here, but we have no agent of our own with the Imperial Government. While our affairs are [illegible]

[illegible]

requires, under the treaty, the approval of the Imperial Government [illegible] changes in laws in force prior to the [illegible] of government. Even in a simple [illegible] of Contract Act the consequent of the

Government of India has to be obtained. Even these petty things get involved in the circumlocution To avoid this delay, there are two clauses in the treaty which require to be removed, viz. (*a*) the clause requiring the previous sanction of the Imperial Government for changes in the law, and (*b*) that which relates to changes of organic law. With reference to the latter, that is, changes in the organic laws, I [illegible] rial Government may [illegible] popular extravagance, [illegible] se, there would also be [illegible]

Note.—The reference to the Reforms may be omitted as they were stated to be incorrect. I spoke on impressions and it serves no purpose to repeat them when they are wrong and the facts are known.

In these circumstances, we claim a recognised position for the people of our State within the Federation, and also relieve us from external charges

CHAIRMAN —On behalf of the Committee, I thank you all, Gentlemen, for placing your views before us so clearly and eloquently I do not think that you would expect us at this stage to indicate any views on the various points raised, but I assure you that they will be carefully considered, in so far as they fall under the terms of reference I am very grateful, and [illegible] pride with which [illegible] in Mysore, and th[illegible] acts of His Highness the Maharaja and his Government, and also for the benefits of the period of the British Administration on which your present government of Mysore is based We are greatly impressed with the state of affairs in Mysore, and we will carry away with us a very vivid recollection of the interesting evidence you gave us this morning.

The meeting terminated at 1.30 p m

Minutes of Evidence recorded before the Indian States Committee at the Residency, Bangalore.

Wednesday, 21st March 1928.

PRESENT

Sir HARCOURT BUTLER, G.C I E, K C S I, *Chairman*
Colonel the Honourable SIDNEY PEEL, D S O } *Members*
Professor W. S HOLDSWORTH, K C }
Lieutenant-Colonel G. D. OGILVIE, C I E, *Secretary*

Dr. Sir M. VISVESVARAYA, K.C.I.E, retired Dewan of Mysore
Mr. RALPH NYE, Executive Member of Messrs. John Taylor and Sons' Committee, Oorgaum.
Mr. E. W. RUTHERFORD, Planting Constituency.

Sir M. VISVESVARAYA.

CHAIRMAN.—It is a pleasure for us to be able to give you an opportunity of saying what you wish to say. I suppose you have seen the questionnaire issued by the Committee. Are there any questions which you would like to give evidence about?

Sir M. Visvesvaraya.—I have nothing particular to say. If you put me questions, I shall endeavour to answer to the best of my knowledge.

Chairman.—We understand you were the Dewan of Mysore. For what period?

Sir M. Visvesvaraya.—I was Dewan for six years from 1912 to 1918.

Chairman.—During that period, was there anything in the relationship between the Paramount Power and the State that called for special notice?

Sir M. Visvesvaraya.—We changed the old understanding into a treaty in 1913; and most of the questions then dealt with are, I believe, referred to in the Memorandum furnished by the Mysore Government.

Chairman.—That treaty reproduced the old Deed of Transfer in a more modern form?

Sir M. Visvesvaraya.—Yes, it was replaced by a more formal document.

Chairman.—It did not introduce any great changes?

Sir M. Visvesvaraya.—No great changes in the previous relationship.

Chairman.—In your opinion, does this relationship work well?

Sir M. Visvesvaraya.—Yes, except in the respects referred to in the representation now made by the Mysore Government

Chairman.—You have seen this representation of the Mysore Government?

Sir M. Visvesvaraya.—Yes, I have.

Chairman.—Do you agree with the statements made in it?

Sir M. Visvesvaraya.—Yes, in a general way.

Chairman.—Is there any particular statement from which you would like to differ?

Sir M. Visvesvaraya.—I might be willing to emphasise some of the statements, but I do not know if there are any from which I differ materially; I am not in close touch with details, and so I do not wish to comment on them In the first place, the Government Memorandum suggests the creation of two Assemblies, one for legislation proper and the other to deal with fiscal matters. This would not be a workable proposition. The representatives of the States should have seats in the Central Legislature and they should be permitted to speak and vote on all questions in which the States are also concerned. Then, it might be desirable to have two members in the Executive Council or Cabinet of the future Government of India, to represent the Indian States. At present there is no such representation on the Executive Council.

Chairman.—That is a recommendation made during your time?

Sir M. Visvesvaraya.—Yes, it originated 10 years ago

Chairman.—When you were Dewan, did you feel that there should be a member on the Viceroy's Executive Council in charge of the Political Department?

Sir M. Visvesvaraya.—Yes, we felt the necessity. It is impossible for the Viceroy to give personal attention to the affairs of so many Indian States. *And many important and complicated subjects often* come up for decision. The affairs have very often to be left in the hands of the Political Secretary The Political Secretaries are able [illegible] do justice to [illegible] constitutional

CHAIRMAN.—There would possibly be hardly enough work for two members

Sir M. VISVESVARAYA —I would like two members. The Executive Council of the Viceroy has now six members. It is not our present purpose to discuss that point, but I must say that six members are quite inadequate That is the reason why the work of the Government of India is so slow, and if I may add, why there is so little initiative. It is better to have a dozen or more members or ministers, as they have in other countries The two members referred to must have the *confidence of the representatives of the States in the Central Legislature.*

Colonel PEEL.—How do you propose that these should be selected?

Sir M. VISVESVARAYA.—The two members may be selected just as Ministers are now selected in any self-governing country or, say, the Cabinet Ministers in Great Britain. They should have the confidence of the representatives of the Indian States.

Colonel PEEL—Seeing that the interests of the States are varied, how could one find any man who would represent the whole of them?

Sir M. VISVESVARAYA.—That is why I suggested that two members should represent the States in the Executive Council Even two may be inadequate, but the work is now done by one Political Secretary, and the two Executive Council Members would do the thing much better. Moreover, they would be in touch with the representatives of the States in the Central Legislature. Anyway, the position would be much better than it is now This is probably the only way open, if the States are to have any representation in the Executive Council of the Governor-General

Colonel PEEL —The point I am trying to elicit is how these two are to represent the States?

Sir M. VISVESVARAYA —They need not actually come from the States. They might be selected by the Governor-General when he appoints his Cabinet from among men who would be acceptable to the representatives from the States in the Central Legislature

If allowed, I would like to make a few more observations in this connection I do not know whether you are dealing with questions concerning the future of the Government of India The relations of the States with the Government of India will depend upon what the future Government of India is going to be like, i e how it is going to be constituted

CHAIRMAN —That is a question which will not come before us

Sir M VISVESVARAYA —Unless that is known, it will be difficult to specify the relationship

CHAIRMAN —That is why it is not included in our terms of reference.

Sir M. VISVESVARAYA.—Then as regards customs, the Government of India now charge certain duties for articles consumed by the subjects of the Indian States The contributions made for various purposes in this way amount to, roughly, Rs 125 lakhs. That is what the State authorities make out If regard is had to the expenditure of the Government of India for defence, the Mysore share will amount (if the calculation is with reference to population) to about 80 lakhs or so and if it is taken in proportion to total revenues it will be about 25 or 20 per cent In that case our State should pay only about 80 or 90 lakhs. Consider how we may, it looks—I am not in close touch with the details —as if the State is paying more than is reasonable

Then I consider that the inland tariffs should be entirely abolished between Province and State and State and State. The subsidy, I beg to submit, is an anachronism. That should go If the econom-

introduced in the Government of India, a Royal Commission should be appointed to investigate the affairs of all the Indian States and to lay down a model constitution for the States as a whole, or more than one model, and then insist upon their adoption in Indian States within 5, 10, but in no case exceeding 25 years. This variation in the period required for establishing constitutional Government will be necessary, because some of the States are very backward and some are advanced. At present the subjects of Indian States have two masters, and so far as they are concerned, both are autocratic I do not include the Mysore State in this category. This State has been 50 years under British rule; it has an enlightened Ruler, and it is more advanced. For all practical purposes, the subjects of Indian States are, when they are out of the States, treated as subjects of British India. The British Government is now giving responsible government to the people in British India They should also give to the subjects of Indian States a voice in the new constitution They should have a voice in the administration of their own States and a voice also in the affairs of the Central Government since they pay taxes to both.

CHAIRMAN.—Have you any evidence to support the statement that the Princes will become more autocratic if the Government of India's control is relaxed?

Sir M. VISVESVARAYA.—Recently the Government of India have dealt with two or three Princes. I do not wish to name them That itself is evidence to support my statement. The Government of India interfered with them only when their affairs went very wrong. The subjects of these States are kept under control only by the fear of the Government of India. If a State is left to itself, the Chief has to win the allegiance of his subjects by his methods of rule and the good he is able to do to them.

Colonel PEEL.—Your point is that in dealing with autocracies the Government of India has also got to be autocratic?

Sir M. VISVESVARAYA.—No Till about 20 years ago the Indian States were controlled by the Government of India. But the control has been relaxed and there is more autonomy. Autonomy means that the Chiefs and their subjects should manage their affairs jointly. At present, the Chiefs have all the power and the subjects have little or no voice. I think this is unfortunate. The British Government have a responsibility to the subjects of the Indian States till the subjects obtain a voice in the affairs of their State. At present, the people of the States do not enjoy adequate protection

CHAIRMAN —That is a position which might be challenged. But the main point is that the subjects ought to have some voice in their own States.

Sir M. VISVESVARAYA.—Yes. They should have a voice in the administration of their own States as well as some voice in the future Government of India At present the Princes seem to want all the power for themselves. They, moreover, want to keep themselves independent of the Indianised Government of India. They wish to be under the King-Emperor direct. As the King-Emperor rules through his Cabinet, it would seem that the Princes prefer to be controlled by the citizens of Great Britain rather than by their own countrymen. These are anomalies which, even if permitted now, cannot in the nature of things last long. It would be better if the ne

in

Indian States.

Mr. RALPH NYE.

CHAIRMAN.—You represent the Kolar Gold Fields?
Mr. NYE.—Yes.

CHAIRMAN.—How is the local administration of the gold fields run?
Mr. NYE.—The mining companies are working under the management of an English firm of mining engineers located in London. Five mines are under superintendents, who take their orders by mail from London. Matters of common interest are worked through the central office, which I am in charge of, and technical and business matters are governed by the superintendents.

CHAIRMAN.—Is there any Municipal Committee which deals with local self-government subjects?
Mr. NYE.—Yes, there are two. The Kolar Gold Field Mining Board, which deals with Government in matters of public importance; it is recognised by the Mysore Government and it represents all the field, the members of the Board being the five superintendents I have mentioned and myself. For purely local affairs there is another Board, called the Kolar Gold Field Sanitary Board. That Board administers all matters relating to public health and other duties of a municipality. The Deputy Commissioner of the District is the president, and the members consist of the superintendents and myself, representing the mines, four or five Government officials, the local medical officer and, speaking from memory, four elected Indian members.

CHAIRMAN.—The judicial administration is under a special officer or entrusted to an officer of the State?
Mr. NYE.—We are given a special officer under the term "Special Magistrate, Kolar Gold Fields," and all ordinary police business comes before him. That is as regards Indians. Whenever questions relating to British-born subjects arise—such cases rarely arise—they come up before Justices of the Peace. In the old days there used to be two Justices of the Peace there—the District Magistrate and the Superintendent of Police. Now we have only one, and that is the Chief Inspector of Mines. He has now gone on sick leave, and there is no Justice of the Peace now.

CHAIRMAN.—That means, in practice, things go on very well?
Mr. NYE.—Yes.

CHAIRMAN.—Are there any points on which you would like to give evidence or bring forward before the Committee? Our terms of *reference include the question of relationship between the States and* the Paramount Power. That, I expect, you are not concerned with very much. But if you have anything to say we would be very glad to hear it. The other question is about fiscal and economic matters, such as customs and excise. There is another matter which might particularly interest you, viz. the general question dealing with capitalists, financial agents, &c., in regard to which the State has a good deal to do through the Government of India, such as raising loans?
Mr. NYE.—Out of the things you mention, there are perhaps one or two matters on which I might say something; but I am afraid it may not be very advantageous.

CHAIRMAN.—You say that your general relations with the State were very cordial.
Mr. NYE.—In every way. I would put it very strongly.

CHAIRMAN.—As regards customs, as you are aware, in recent years a big tariff has been imposed, and this has raised a large revenue which, in one of the recent years, was about 49 crores The State has now been claiming a share of this because the people living in it contribute to it indirectly, but at present get no benefit from it at all. I suppose in the Kolar Gold Fields the imports are considerable and you are paying customs duties?

Mr NYE.—Yes, considerable.

CHAIRMAN.—I suppose machinery is got by the mines free of customs duty?

Mr. NYE.—No, far from it. It varies, and in some cases we are paying the maximum tariff.

CHAIRMAN.—Has the import duty on steel hit you hard?

Mr. NYE.—It has cost us a great deal more money, but I cannot say that it has hit us hard. It has not been crippling us because it does not form such a large percentage of our total expenditure.

CHAIRMAN.—If the prices are kept down in spite of the tariff, I suppose it is the effect of dumping in the market by foreign countries?

Mr NYE.—Yes.

CHAIRMAN.—Have you felt the high tariff very much in Kolar?

Mr. NYE.—It has all come in after the war, high tariff with increased wages, &c. All these are matters of extra cost and we had to enter into a very severe campaign of economising expenditure in order to meet it. The result was that the actual gross outlay has been reduced by about £100,000 a year. I am only speaking from memory and I have not got the figures in front of me. A large portion of our imports consists of electric machinery and we had to pay very heavily for it. Then, home cost has also risen very high The duty, which has now been increased, is considered to be very high.

CHAIRMAN.—Are you interested in the question of railway jurisdiction? The Durbar say that their railway administration is sufficiently good to justify the retrocession to them of railway jurisdiction over the whole length of the lines in the Mysore State At present, railway jurisdiction is with the British Government under the original agreement; have you suffered at all from that, or have you any views in the matter which will support the Durbar's request?

Mr. NYE—It is difficult to give first-hand evidence. Our line is worked by the Madras and Southern Mahratta Railway Company. So I have no personal experience at all of the efficiency or otherwise of the Mysore State Railway. My knowledge is not sufficient to test its efficiency.

CHAIRMAN.—Dealing with capitalists and financial agents; have you anything to say on that point?

Mr. NYE.—I do not know anything about it. But I think the restrictions at present imposed go very hard on the Mysore Government.

CHAIRMAN.—Then there is the question of jurisdiction over European British subjects. The Durbar suggests that in cases where a European or Anglo-Indian is prepared to waive his right of trial as such, there should be no objection to his being tried by the Mysore Courts Have you any views on that subject? Does the present arrangement work well?

Mr. NYE.—This point was put to us some months ago. But the present suggestion was not put before us. But if it is put to us, we might be willing to submit to the jurisdiction of the Mysore Courts. Even then, we made some suggestions in the matter, but we left it at

that. We did not wish to take any firm stand then. But there is one thing In British India it is presumed that an appeal to the Privy Council will ultimately lie That is a big guarantee which is given to British Indian subjects. Here it is not so. The Chief Court is the highest authority. That is a point to be considered.

Colonel PEEL —You pay income-tax to the Mysore Government ?

Mr. NYE.—Yes.

Colonel PEEL.—To the extent that imports cost you more, you have not been paying income-tax ?

Mr. NYE —That is so.

Colonel PEEL.—Does it make any appreciable difference ?

Mr NYE —There is very little difference. Do you mean that we pay less tax by reason of the high import duty ?

Colonel PEEL.—Yes.

Mr. NYE.—Then I cannot answer the question. Because we rather [illegible] manage- [illegible] imed [illegible] le of [illegible] will [illegible] the two, I quite admit.

Colonel PEEL.—I want to know whether you will call it appreciable ?

Mr NYE —Not enormous What we pay here as income-tax we get back in England [illegible] ifference is not very large. [illegible] and about one-third of ou [illegible] regard to income-tax. we pay about one-half of the total income-tax, collected in the State, and two-thirds of the super-tax, that is in addition to the indirect taxation levied from our employees On the question of super-tax, we had unfortunately to enter into litigation with the Mysore Government in various instances These cases the Mysore Chief Court tried at great length and we spent a lot of money Some of the cases were successful, and some have not been successful. With the highest respect to the Mysore Chief Court, I cannot help feeling that these cases went against us on account of the fact that the Bench of that Court is not experienced in commercial matters. Such is not the case in the Privy Council. Workmen's compensation cases give rise to some very difficult problems even in England, and when we come before a Court which is not conversant with modern commercial practice, we feel we are at a disadvantage

CHAIRMAN.—Have you representation on the Legislative Council ?

Mr NYE —Yes, under the new regime the Durbar has given us representation under which one member is nominated to the Council They have also given us actual representation on the Representative Assembly

There is one other point on which I would like to say something We very often see in the papers particulars relating to the passing of legislation in British India. We know that that law becomes the law in Mysore a couple of years later. We do not get a chance to say anything when it is under enquiry in British India. When once it comes into force it will be too late to submit any point which goes to the root of the matter. Whether any facilities under any new scheme could be given to us in Indian States, whereby people like us would be given an opportunity in the early stages of any new legislation affecting the country, is a point that could be usefully considered by the Committee.

Mr E. W. RUTHERFORD.

CHAIRMAN.—You represent the planting interest?
Mr. RUTHERFORD.—Yes.

CHAIRMAN.—How long have you been engaged in planting in Mysore?
Mr. RUTHERFORD—I came here in 1894; I have been engaged in planting for more than 30 years.

CHAIRMAN—Is planting represented on the Legislative Council and the Representative Assembly?
Mr. RUTHERFORD—Yes

CHAIRMAN—Is there any particular point of interest to the planting community here which you should like to represent?
Mr. RUTHERFORD—Yes I think we want more money. Our roads, for instance, badly want repairs, and for that money is required. No money is spent on roads in the malnad In fact, last year during the rainy season, it was almost impossible to get our carts down. Since [illegible] this direction, Madras also [illegible]ite a lot more money in [illegible]ountry and it is necessary [illegible] produce All this side is [illegible] the west coast

CHAIRMAN—Therefore, would you support the Mysore Government in getting all the money they can?
Mr RUTHERFORD.—Yes, the more money the better. I have been in Mysore for a long period and I know that whatever we apply for falls through, because the Government say they have no money; and a few hundred rupees will go for nothing in a place where the rainfall is over 200 inches

CHAIRMAN—So that I may take it that your community will support the proposition that the Mysore Government should get all the money they can
Mr. RUTHERFORD.—Yes

CHAIRMAN—Have the customs duties affected your community much?
Mr. RUTHERFORD—Not very much, as far as I am aware.

CHAIRMAN—The planting community, I suppose, is not very directly concerned with the relationship between the States and the Paramount Power except from the financial point of view?
Mr. RUTHERFORD.—We have all along been in Mysore, and we would like to continue so, within the British Empire

CHAIRMAN.—You are very much satisfied with the existing relations?
Mr. RUTHERFORD—Yes.

CHAIRMAN.—Are you satisfied with the arrangements at present existing with regard to railway jurisdiction?
Mr RUTHERFORD.—We should like the railway to come down to the west coast. The general opinion of planters is that there are not railway facilities enough now. Our place is only 66 miles from the west coast. If money could be found and the roads made fit for heavy motor transport, the problem would be met for the present.

CHAIRMAN.—Have you had any difficulties regarding jurisdiction over European British subjects?
Mr. RUTHERFORD—We have not had any difficulties so far, and we have no objection to the present arrangements continuing if we are sure that proper Bench Courts would be formed to deal with European

British subjects. We are a scattered community and that would be the only solution. Otherwise we have no objection, I believe, to be tried by the present magistrates in any way whatever But from the point of view of Europeans, they would like to have their own magistrates. There is one difficulty if no such arrangement is made, viz, the position in which the Europeans would be placed. Suppose a European lady is to be tried by an Indian magistrate. Has she got to be put in the ordinary jail? There is no separate room for members of the European communities. I do not think that the Courts here are sufficiently trained to deal with European ladies It is a serious position if a lady or young girl is to be put into the same jail. This is why we thought that European magistrates are absolutely necessary with a Bench of their own or something like that. Otherwise, we have lived together and we have got on well

CHAIRMAN.—Have your general relations been very satisfactory?
Mr. RUTHERFORD.—Yes.

CHAIRMAN —Do you pay income-tax to the Mysore Government?
Mr. RUTHERFORD —Yes.

Colonel PEEL.—How large is the community you represent, and what is the extent of your industry?

Mr. RUTHERFORD —We represent about 30 to 50 thousand acres. During the war the community broke down, but we have a lot of men coming up now. As many as 30 people have come in now from one district alone within the past few months

Colonel PEEL —Englishmen?
Mr. RUTHERFORD —Yes.

Colonel PEEL.—You plant both coffee and tea?

Mr. RUTHERFORD.—Yes They have been trying tea lately as an experiment. Very big companies have come in and the experiment is going to be a success They are putting very big sums of money on it

CHAIRMAN —Is there anything else which you may like to say?

Mr RUTHERFORD —I do not think there is anything definite, except that I should certainly like to see more money coming into the State, if possible, because whenever anything comes up to the Mysore Government, they say they have no funds, and those of us who have been in with them see that they have not got funds

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Thursday, 22nd March 1928.

PRESENT

Sir HARCOURT BUTLER, G C.I.E, K C S I., *Chairman*
Colonel the Honourable SIDNEY PEEL, D S O } *Members*
Professor W S. HOLDSWORTH, K.C. }

Lieutenant-Colonel G. D. OGILVIE, C.I.E, *Secretary*.

Khan Bahadur MAHOMED ABBAS KHAN, President, City Municipal Council, Bang[illegible]
Mr. D V. GUND[illegible]
Rao Sahib A T[illegible] ry Station Municipality and Mysore Legislative Council.

Khan Bahadur MAHOMED ABBAS KHAN.

CHAIRMAN.—We hear you are the President of the City Municipal Council and also a Member of the Legislative Council and the

Representative Assembly. I do not know if there are any particular points which come within our terms of reference on which you would like to give evidence. You have probably seen the statement of the case that has been drawn up by the Durbar.

Khan Bahadur MAHOMED ABBAS KHAN.—Yes, I have seen it.

CHAIRMAN.—Are you in general agreement with that statement?

Khan Bahadur MAHOMED ABBAS KHAN.—Certainly. Further I wish to give a general survey of the Mysore finances and also the needs of the people Our receipts amount to Rs. 3 crores and 40 lakhs as estimated for the current year. We are paying for Army and Defence Rs 52,78,000, and our Palace Civil List and Royal Family Pensions come to Rs 26,10,000. Our sinking fund and interest charges amount to Rs. 53,41,000, and our pension charges to Rs 14 lakhs. Thus nearly a crore and a half of rupees are a first charge on our revenues and only two crores would be left for the Administration For establishment charges, protection and similar expenditure we want a crore and 14 lakhs, and for moral and material development, which includes education, Rs 59,66,000. The expenditure under Public Works, including irrigation, comes to Rs. 28,44,000, and grants for public improvements to Rs. 6,25,000 My point is that we have not been able to balance our budget without drawing from the reserves We have to draw Rs. 15,63,000 from these funds and even from interest on famine insurance fund to balance the budget. Our revised figures show that another Rs. 20 lakhs have had to be spent over and above the budgetted figures. During the current year the total deficit may amount to Rs. 35 lakhs

We have got about 23,968 tanks in the State, and a half of them are not in good order. We have no funds to put them in repair. We have 19,363 villages, for which we have only 6,363 primary schools. There is an incessant demand for more schools in the villages, but there are no funds to open more. We want at least about Rs 12,00,000 to open additional schools

CHAIRMAN.—You want to give one school for every village?

Khan Bahadur MAHOMED ABBAS KHAN.—No, in that case we should have 19,000 schools. For the more important villages and groups of villages we want to provide schools, but it has not been possible. As regards hospitals and dispensaries, we have only 212 of them, while our population is six millions and our area 30,000 square miles We want a large number of hospitals in the rural parts, but again we are handicapped for want of funds. As regards middle schools we have only 257 of them. About six or seven years ago Government had decided on a programme to open about 600 middle schools within five years, but for want of funds they have not been able to make any progress in that direction Similarly, in regard to high schools, of which we have only 2[illegible] [illegible]ys and girls, a large number of t[illegible] and Mysore. There has been a de[illegible] the Mysore State, and in rural parts particularly. For want of funds this demand on the part of the public cannot be satisfied. We have got a scheme for improving the malnad. Malnad is a jungle tract. But the work cannot be taken up on an adequate scale for want of finances. In connection with rural reconstruction we have started village panchayets. The demand for better police arrangements, better sanitation and provision of more drinking water wells, specially in [illegible] very large, but for want of [illegible]s. 6,23,000, including contri[illegible] of Bangalore and Mysore.

We must have at least Rs 15 lakhs under this one item alone so as to extend this activity to the whole State. Our large cities and towns are suffering for want of a copious and adequate supply of filtered water, but we have not been able to help them.

Our one difficulty is that our revenues are inelastic. Within our limited scope we have to set apart a large sum for imperial and royal purposes, as already submitted What remains over is hardly sufficient to meet all reasonable demands Our Government have started a university. Its development has suffered and is suffering for want of funds. All that we have been able to spare from the general revenues is only Rs. 7 lakhs, which is not sufficient.

Our revenues, totalling Rs 3,40,00,000, include several uncertain factors which might disappoint us at any time.

CHAIRMAN.—Have you got a table of your revenues for the last three years?

Khan Bahadur MAHOMED ABBAS KHAN.—They have been stationary, more or less

Our mining revenue, for instance, which was once about Rs 16 lakhs, has now gone down to 12 lakhs. We cannot be sure of such items, but we are depending upon them for our permanent recurring expenditure. So we are in great need of relief, and particularly in the popular Assembly the representatives of the people from rural parts come and represent their grievances and make out a case for more money for relief in several directions. But the Government are not able to meet those demands

One more thing. Mysore State was once noted for the cultivation and exportation of paddy on a very large scale. But now the reverse is the case, because as many as 14,000 tanks are out of order, and we are now depending for our normal supplies upon the British territories. Paddy is now imported.

We have got a Department of Industries and Commerce; we have not been able to finance that department adequately. The suggestion is always put forward that the department itself may be abolished. Because, so long as we are not in a position to finance the department, it does not serve any useful purpose to maintain a Director and a large establishment under him. We want money, therefore, for developing our industries and commerce We have, similarly, a Sanitary Department, with a Senior Surgeon and Sanitary Commissioner, a Deputy Sanitary Engineer, and a large sanitary establishment. But for want of funds required for work, it is always urged that the department itself may be abolished. The condition of our villages in point of sanitation is deplorable We are trying our utmost with the co-operation of the villages to effect improvements, but without funds nothing substantial could be done. The Sanitary Commissioner and the sanitary inspectors are submitting a number of useful schemes whereby the fate of these poor men could be improved, but for want of funds we are unable to sanction them.

I do not wish to take up more of your valuable time, although there are several things which I may bring to your notice regarding our claims for other items of revenues on which I hope my friend Mr. D. V. Gundappa may probably give his views.

CHAIRMAN.—You propose to meet this unfortunate state of things by increased taxation or by grants from the Government of India?

Khan Bahadur MAHOMED ABBAS KHAN.—By grants from the Government of India. I beg to submit that our taxation has reached a very high limit and there is no scope for a further increase There only one item which was not tapped till recently, viz. income-tax,

even that has now been introduced, and we are getting about 15 or 16 lakhs of rupees from that source. There is not one source available which we could tap afresh in the matter of taxation. That is an aspect which is being pressed before the Representative Assembly year after year in a more detailed form. We feel hopeless and helpless because there is absolutely no money.

In the figures that I have already submitted I have taken into account the recent reduction in the subsidy, for which all of us feel highly grateful

CHAIRMAN —I fully sympathise with you, because two provinces have proved to the complete satisfaction of the Government of India that they have been starved and so the Government of India have made large grants to those provinces.

Khan Bahadur MAHOMED ABBAS KHAN.—Yes, and to Madras they gave relief to the extent of Rs 3 crores, as much as our total revenue for a year It will not be too much on our part to submit our case for a similar treatment

CHAIRMAN —I do not know if you have worked out the relative incidence of taxation in Mysore and in British India?

Khan Bahadur MAHOMED ABBAS KHAN —So far as I could see, the incidence here will not be less than in British India; on the other hand, I suppose it is more

CHAIRMAN —If you take it that your general receipts come to Rs 3,40,00,000 for a population of 6,000,000, it works out to something like 5 6 per head per annum, whereas in Burma the receipts come to Rs. 10 crores for a population of 13,000,000; that means the incidence there is 7 6

Khan Bahadur MAHOMED ABBAS KHAN.—That is because conditions differ. Ours is a dry country One other thing is that we are getting about Rs 60 lakhs from excise, and the present tendency is to abolish excise shops and give local option This income has gone down from Rs. 70 lakhs to Rs 60 lakhs. There is thus a fall of Rs. 10 lakhs within a course of two years In fact, it is apprehended that this revenue may still go down.

CHAIRMAN.—So the only remedy is that the Government should meet [illegible] which will

[illegible] e has been put in the printed memorandum, and we are prepared to argue and support our case by adducing further arguments. But in one sentence, I would submit that we wholeheartedly support the case. In fact, the case has not been put in such strong language as it should have been from a non-official point of view. Probably the Government thought that it was delicate to put it in a strong way. From a non-official point of view we would have put it in stronger language.

CHAIRMAN —That is usual

Khan Bahadur MAHOMED ABBAS KHAN —As regards the state of advancement in our State I may say that even if we go to a remote place we see that the ordinary villagers are in a position to discuss financial problems of the Mysore State—thanks to the institution of the Representative Assembly and the Legislative Council, where in the case of all popular measures non officials are always associated with members of the Government, as a result of which we are all enabled, to the best of our abilities, to understand the state of working of all Government Departments, their ways and means and so on. What I submit is that more and more the people are asserting themselves;

they say "Why should there be a differential treatment? Why [illegible] ...eges, good roads and electric [illegible] It is our money and so we [illegible] meet arguments like these? [illegible] erring to the city of Mysore. So much money is spent there. It is not municipal money It is all Government contribution, amounting to several lakhs of rupees. People assert that this ought not to be and that the money must go for opening more wells, restoring tanks, giving education to people living in the remote parts of the State We have as many as 14 lakhs of the Depressed Classes out of a total population of 60 lakhs. What we have done for them is not enough and a great deal more has to be done In India these classes are not allowed to use the general wells, they must have separate wells, otherwise they will have to go without water. They must have separate schools, because the other communities would not admit children of these classes into their schools, and if separate schools are not given, they must go without any education. Being loyal subjects of His Highness the Maharaja, they ought not to be deprived of [illegible] facilities which the Governm[illegible] means money So ours is a ca[illegible] and kind consideration; and we pray to you for relief in this respect. As I mentioned last evening, your visit would be ever remembered and we would never forget it, because you are championing the cause of the Indian States This is an event of great importance and it is a matter of the greatest pleasure and pride to us that we have been able to put our case before you for your kind and sympathetic consideration.

Mr D. V. GUNDAPPA.

CHAIRMAN—You have placed your views on record in a pamphlet, which you have been so good as to send us, on our terms of reference and their implications The Committee must interpret its terms of reference, and in some respects we do not interpret them in the way in which you would wish them to be interpreted.

Mr. D. V. GUNDAPPA—Yes—I quite well understand that, Sir.

CHAIRMAN—And you will understand that is a matter which we have to decide in the ordinary manner and with reference to the present business for which we have been appointed

Mr D. V. GUNDAPPA.—I hope I have not been understood to be presuming to dictate to the Committee the manner of interpretation

CHAIRMAN.—No, no And so far as refers to the ultimate future of the Indian States, you will readily see, as every practical man must see, that any consideration of this question must be preceded by a consideration of the question of what will be done in British India. For that purpose, a distinguished Commission under the presidency of Sir John Simon is now working, and until their decisions have been reported and considered by Parliament none of us can know what the future of British India will be.

Mr. D. V. GUNDAPPA—May I be permitted to make a remark on that point? I should rather think that while in regard to British India the Simon Commission is certainly competent to make recommendations of its own, those recommendations, however, while receiving consideration at the hands of the British Government, should be co-ordinated with such views as may be put forward on behalf of the States. The future of all India cannot be determined without

reference to the question of the States also I do hope that Sir John Simon will make his recommendations such as will be acceptable also to the peoples of the States. But if he should fail in that, I dare say the Imperial Government will consider his recommendations in the light of the requirements of the States also.

CHAIRMAN.—It is not a practical proposition to consider the future of the States, occupying one-third of the total area and one-fifth of the population of India, until the bigger question of British India has been considered, and considered, of course, with reference to the States. But the present Committee is limited to dealing with the present relationship between the Paramount Power and the States; and also it is called upon to consider certain financial and economic relations between British India and the Indian States and any recommendations that the Committee may consider desirable or necessary for their more satisfactory adjustment That is a preliminary enquiry which, in time, will no doubt lead to a further enquiry.

Mr. D. V. GUNDAPPA —That is very hopeful. I am very greatly encouraged to learn that there will be another enquiry.

CHAIRMAN.—I am not in a position to say that there will be. It is possible there may be Now, as regards this, you have been good enough to send us your pamphlet and my colleague, Professor Holdsworth, has got certain questions to ask in regard to that

Mr. D. V. GUNDAPPA.—I shall deem it an honour

Professor HOLDSWORTH.—You say, at page 3 of the pamphlet, that the Paramount Power has certain fiduciary obligations to the States in regard to the responsibility of good Government and so on. Supposing the people of the State get more constitutional rights, would you consider the Paramount Power relieved of the responsibility for good government to that extent, even though the people govern badly? How would the Paramount Power be able to remedy if the people themselves go wrong?

Mr. D. V. GUNDAPPA.—I do not accept that statement in such a wholesale fashion. I hope the people are interested in their own welfare; I think they can understand it at least as well as others can. If occasionally their judgment is in error, that is because of inexperience They have a right to err once or twice and learn. That is the fundamental principle of the theory of self-government

Latterly, we have been seeing onslaughts on democracy. Men like Wells have been doing it. My faith in democracy, however, continues That is the lesson I have learnt from England.

Professor HOLDSWORTH.—Then again you say that treaties cast a responsibility on the Paramount Power of establishing constitutional rule. I have read the treaties, but I do not find any clause which casts that responsibility on them.

Mr. D. V. GUNDAPPA —I submit that is merely another way of saying the same thing as this · that to the extent to which constitutional rule is established in the States, to that extent the British Government will be relieved of its great fiduciary duties.

Professor HOLDSWORTH —I would like to see the clause of the treaty

Mr. D V GUNDAPPA.—There is no definite clause. Let me submit that at the time treaties were drawn up, there was no such entity as the peoples of the States; it was not contemplated Even such an entity as British India was not contemplated at all. No treaty mentions the people of the States as such But generally, since the Committee's reference is also with regard to usage, custom, political practice, and so on, I may just invite attention to the correspondence

that preceded the restoration of Mysore in 1881. In those documents, it has been very definitely stated by the Secretary of State of that time, and also by the Viceroy and the Chief Commissioner of that time, that the British Government has taken up a very serious responsibility in this direction If I may, I should like to submit extracts .

Professor HOLDSWORTH —Everybody admits it I do not know if it necessarily follows that they are obliged to establish constitutional government in the States A State is very different from British India.

Mr. D V. GUNDAPPA.—I would rather put it this way: I take it that the declaration in favour of responsible government for British India is part of the Imperial policy It is part of the British Government's general opinion of what good government is If that is so, my view follows as a matter of course What is good for British India must surely be good for people of the State For proof, Mysore is one Mysore furnishes an example of a State where the establishment of constitutional rule has been followed by a very considerable, rapid popular progress To the extent of our constitutional improvement I daresay our popular progress will increase also And there has been no occasion for British interference here I understand the difficulties of the British Government. They are unable to interfere to prevent ordinary misrule It is only when very grave misrule is brought to notice that they can interfere and that too they do very reluctantly. Whenever they do interfere there are politicians of British India who say that they have been interfering with the sacred treaty rights and so on.

Professor HOLDSWORTH —Would you say that all the States are fit for responsible government now?

Mr. D. V. GUNDAPPA.—I do not say so But I insist that responsible government must be accepted as the goal. I would invite attention to para. 4 of the pamphlet, in which I have said that in the meantime, until responsible government comes to be established, the Paramount [illegible] urpose of ensuring progressive [illegible] the States. I insist that the [illegible] once and for all declared and [illegible]

Professor HOLDSWORTH.—That is a counsel of perfection, and it is a question of the distant future. In the meantime something can be done, so that in the end the States may be fit for responsible government?

Mr. D. V. GUNDAPPA.—Quite so. That is, in fact, what we have been demanding.

Professor HOLDSWORTH.—You lay stress on the future goal. Is responsible government the best form of government?

Mr. D. V. GUNDAPPA.—So long as Parliament has declared in its favour, I think we might very well accept it as roughly the best. I also submit that it is very necessary in the meantime to have such things as the reign of law, some kind of legislature to facilitate the work of legislation and so on.

Professor HOLDSWORTH.—At page 11 of your pamphlet you use the word "murky" with reference to the Political Department; so it is a grave concern to a great many States.

Mr. D. V. GUNDAPPA —I do not deny it at all. In fact, the Princes have hundreds of grievances. They go about putting on the air of injured innocents I may bring to the notice of the Committee that

when we were agitating for more political power for our constitutional assemblies in Mysore, it used to be said—I do not know with what amount of truth, I do hope that there was no truth at all in it—that the Government of India would not look at any proposal for the extension of reforms.

Mr. R. RANGA RAO (*General Secretary to the Government of Mysore*).—I may assure you that there was not the remotest truth in it.

Mr. D. V. GUNDAPPA.—But the chance of putting forward that excuse to the people is there.

Khan Bahadur MAHOMED ABBAS KHAN.—I think in form it must receive the previous sanction of the Government of India; that is all.

Mr. D. V. GUNDAPPA.—I do not object to such a clause itself in the treaty. It can work both ways. It may save several States; it may injure several States. I do not object to the presence of the clause; but I do really think that the general principles on which the Political Department works should be made known. We know nothing about it. I interviewed an officer of the Political Department at Delhi. He was very nice to me, but he would tell me nothing about the inwardness of the Nabha-Patiala case. "This is confidential and I am very, very sorry I cannot give this to you," he would say. He would show me just the labels on the files, but would not give me any information

Professor HOLDSWORTH.—Is not the fact that the States continue to exist the best testimony to the worth of the Political Department?

Mr. D. V. GUNDAPPA.—May I answer that question in a couple of sentences? A distinguished Liberal politician of British India was telling me that there is a peculiar merit of the British Government as well as a peculiar demerit, that it allows the States and their citizens to grow up to a certain standard and there the growth is stopped. It will not allow either the States collectively or the citizens individually to rise beyond that standard. There is a medical friend of mine of whom I jocularly say that he neither allows friends to die nor enables them well to live. Wl ... , comes in all hurry, all fomentations and reliev ... just out of danger he does not administer any more medicine, because he has no excessive faith in medication. "No, no; you have got to pick up," he would say, "by the strength of your own vitality." The British Government has been pursuing a similar policy. It will not kill a State, nor will it enable it to develop itself very well. I put it from the point of view of the people.

Professor HOLDSWORTH.—So you want to change the doctor?

Mr. D. V. GUNDAPPA.—No, no; I would not. But I do want a change *in* the doctor, *in* his method.

CHAIRMAN.—Have you visited any State beyond the happy State of Mysore?

Mr. D. V. GUNDAPPA.—I have gone to some here and there I have gone to some Southern Mahratta States and visited Cochin and a few other States. I have seen some Northern Indian States also. And I possess valued friends in Gujerat and Kathiawar.

CHAIRMAN.—Do you find them all as advanced as Mysore?

Mr. D. V. GUNDAPPA.—Well, I should like to be modest. Of course, not. I won't brag about the progress made by Mysore.

CHAIRMAN.—Is there any particular matter which you would like to elaborate beyond what you have said in this pamphlet?

Mr. D. V. GUNDAPPA.—There is little for me to add. I would certainly press for financial relief for Mysore by way of refund of or a share in customs revenues paid by us. You were pleased to ask my

friend about the incidence of taxation. I gather roughly that the incidence is higher in Mysore. In addition to the incidence of local taxation, we have the indirect Imperial taxation

CHAIRMAN.—Have you worked out the figures?

Mr D. V GUNDAPPA.—No, sir. To some extent it is a question of manipulating figures. I think it is a game which two can play at

CHAIRMAN.—I do not wish any manipulation I only want to know if you have gone into that question.

Mr. D. V. GUNDAPPA —But if I give any figures you might charge me with having manipulated. Because I understand from some official calculations that the incidence of taxation—Imperial, I mean—is about Rs. 1. 12 per head in British India and Rs 2 1 in Mysore It is higher here. The indirect taxes we pay are higher I only press the case, in general terms, of our being entitled to a share in the all-India revenues But I am not so anxious about this share as I am to get a share in the determination of all-India revenues We are being tyrannised over by the British Indian Legislature. We cannot stand that Then, there is an impression everywhere that our status is lower—that a Native State, even so big a State as Mysore, is something like a branch of a department of the Government of India I do not think it flatters us to feel like this Wherever we go we are told, and the law courts tell us, that we are foreigners in British India, sometimes. Unless we get a share in the management of certain all-India matters our status will not be raised Being equal subjects of His Majesty, I do not see why we should be discriminated against in this fashion

Colonel PEEL.—I understand what you want is to become a part of British India?

Mr. D. V GUNDAPPA —No. But what I wish is to become a citizen who enjoys all the privileges open to the other citizens of the Empire. I want all the advantages available to the subjects of British India. The British Indian citizen, in his turn, wants to be placed on a par with the citizen of Canada or Australia That is a different matter I will pitch my expectations low enough so that I may not be disappointed. I will be satisfied if the privileges made available to British India are made available to us also We do not want to interfere in all British Indian matters, but we certainly want a voice in the determination of certain all-India policies. For example, they are constituting Commissions nowadays. They constituted the Sandhurst Committee, the Taxation Enquiry Committee, the Currency Committee. There was not a single representative of the Indian States in any one of those Committees, while the States are being really very greatly affected by those policies. For example, take the Currency Committee. No reference was made to Mysore about the determination of the currency policy. But because Hyderabad retained its own mint, it made plenty of money during the war. It minted its own coins. It had its own silver. It made lots of profits.

CHAIRMAN.—That is to say that you wish the States, individually or collectively or both, consulted in matters of common interest, and when enquiries are made in matters of common interest the States should be represented on the body that makes those enquiries?

Mr. D. V. GUNDAPPA —Yes, certainly; and to the argument which might probably be advanced against the proposition, viz. that the Chamber of Princes is exercising, or is expected to exercise, such functions, I would say that it is not satisfactory at all. In fact the more important States have not come into the Chamber of Princes and that Chamber cannot adequately influence policies to be arrived at in British India.

Rao Sahib A. Thangavelu Mudaliar.

Chairman.—Have you anything to add to the evidence given by the previous witnesses?

Rao Sahib A. Thangavelu Mudaliar.—I have not much to add. I am a resident of the Civil and Military Station, though our properties and interests are more in the Mysore State, all our business, including mining, is in Mysore. I happen to be one of the directors of the mills here, practically we started the Bangalore Woollen Mills during my grandfather's time. It developed so much that when we had to settle its permanent location we deliberately preferred the Civil and Military Station because we got better facilities there. We have got an ample supply of water and all facilities by way of electricity and things like that. When the excise duty on cotton was first introduced all of a sudden, the Mysore Government adopted it, and being concerned in the mills we had to introduce it though no reference whatever was made to us. We had undertaken large contracts, calculating on a low cost price of cotton which, when [illegible] contractors, had really go[illegible] suffered very much. Imm[illegible] British India we sent a petition to the Mysore Government to do away with it similarly. But we received a reply from the Government that they could not do it because that would seriously affect their budget. So the duty was done away with in British India, but we had to keep it on for a certain time till it was found practicable to do away with it.

Mr. R. Ranga Rao (General Secretary to the Government of Mysore).—They abolished it almost immediately.

Rao Sahib A. Thangavelu Mudaliar.—What I want is just to show that it would be much better to consult us in the matter of Imperial taxation or to give the Mysore Government some voice before a duty is either imposed or done away with.

Then coming to the question of excise, we happen to have run the manufacturing contracts for the State for a number of years. We supply to the Civil and Military Station only arrack. When we want [illegible] as on liquors coming from England or other European countries. They take our country liquor but they will not take our special liquor. I believe this matter finds a place in the Memorandum furnished by the Government.

Regarding income-tax, we feel great inconvenience in Cantonment. For instance, I have a lot of business concerns in the Mysore State. The Mysore Government levy the tax on us because they say they must tax at the source. The British Government say: "When you are living in Cantonment and bring all the money into it, you have to pay the tax to us." That is a very awkward position which takes years together to reach a settlement.

Chairman.—Are you talking of the income-tax levied by the Mysore Government or British Government?

Rao Sahib A. Thangavelu Mudaliar.—Both.

Chairman.—That is because you live in Cantonment and your business is outside.

Rao Sahib A. Thangavelu Mudaliar.—Yes. Another thing, we do not know where we stand—those living in Cantonment—as to whether we are treated as British Indian subjects or Mysore subjects. For instance, in one of the big cases, after Arbuthnot's failure, the whole

point turned on that one subject: whether we are British-born subjects or Mysore subjects. It was a case about contracts, and we had to go to the Privy Council to get it settled

CHAIRMAN.—What did the Privy Council decide?

Rao Sahib A. THANGAVELU MUDALIAR.—They decided that we were British subjects. Our legal friends say that there is a vast difference between Mysore enactments and British Indian enactments

Mr D. V. GUNDAPPA.—If I may be permitted to butt in, one thing follows: if they are British subjects, they should be represented in some British Indian Legislature

Rao Sahib A THANGAVELU MUDALIAR.—Yes When they started the Territorial Force many of us were very anxious to get into it for training The question came up as to whether we were Mysore or British subjects, again. Though they took me in, they objected to many others getting in.

The Civil and Military Station area is very small, and is surrounded all round by the Mysore State Even for our daily necessities, such as vegetables, milk, curds, &c. we have to depend on the Mysore State They have got enactments relating to health and things like that in *the Mysore State which we have not got in Cantonment* So, if there is any hitch about these things the suppliers from Mysore limits strike and do not bring any produce at all into the Cantonment limits and we are handicapped very much

Coming to the question of water-supply I was Vice-President of the Cantonment Corporation when certain matters relating to this question came up before it We, as inhabitants of Cantonment are keenly interested in the development of water-supply But there is no scope for united or concerted action

In the matter of education in Cantonment, I think our family has done very much They started, for instance, a technical high school, before any schools were started in the British area We were the first to start Panchama schools for the benefit of the depressed classes about 60 years ago. We had three schools for them Even at the time when we approached the British Resident for some sort of support—not in the way of any contribution or anything like that, my grandfather had Rs 5 lakhs ear-marked for this purpose—but we asked for some decent interest on the money which might have been accepted as a charitable endowment, it was only the Mysore Government who came forward to help us, though the institutions were in Cantonment. This is why all our investments are in the city. They very graciously came forward with an offer of 6 per cent. interest, for which we are very grateful to them.

At the time of the recent visit of His Excellency the Viceroy, as also at the time of the previous visit, we were urging that we of the Cantonment had no representation on any of the constitutional bodies of British India. We do not get representation in the British Indian Legislatures or the Mysore Legislature. Of course, I happen to be a Legislative Council member here on account of my interest in the Mysore State, but as purely Cantonment inhabitants our highest ambition at present is only up to a place on the Municipal Council. We cannot go any further. As soon as that is reached, there is an end. When the tract is a ceded territory, we should like to have some sort of representation in the Mysore Legislature, if possible.

We also raised the question of High Court jurisdiction during the last Viceregal visit, in our address. Beyond the Resident's Court we have none. The next thing open to us is only the Privy Council. But going to it is so very expensive that even though our case is very good,

we feel shy to go up to it. We want some jurisdiction to be given either to the Madras High Court or to the Mysore Chief Court.

We labour under similar disabilities in regard to education. We have a Second Grade College in Cantonment. If we want higher education we must go to Madras, because this college is not affiliated to the Mysore University We must either go to British India for educating our youngsters or put them in the city colleges from the beginning, because the courses are quite different in the two areas, and we cannot change in the middle of their career.

I have nothing more to add.

CHAIRMAN.—On behalf of the Committee, I thank you, gentlemen, very much for the interesting and valuable suggestions you have given us and we shall consider them in detail.

Mr. D. V GUNDAPPA.—We are all very grateful to you, sir, for giving us an opportunity to come into contact with you and your colleagues, particularly Professor Holdsworth, if I may mention one out of the names of those who have occupied very distinguished positions in the University of Oxford. He succeeds Professor Dicey, whom we consider as our Guru in this country

APPENDICES.

APPENDIX A.

Discussion of Matters of joint Interest to British India and the States.

The memorandum prepared by the Secretary to the Committee* shows the present position in regard to this question.

Owing to the expansic [illegible] o functions of Government and thei [illegible] the whole of India, there are now [illegible] to British India and the States that some method of discussing them in common is eminently desirable. The Princes are at present reluctant to agree to representation in any body which would have specific authority to bind the States by its decisions; for they realise that they would *pro tanto* surrender some portion of their internal sovereignty, to which they cling jealously. It is true that even now they are, in fact, helpless against the decisions of a British Indian Government in such matters, and their hesitation to accept the limitations implied by representation on an authoritative body may seem to be unreasonable. But many, I think, will prefer to retain the shadow of sovereignty rather than accept a small share of the substance of control There are also substantial grounds for their reluctance. They fear that a joint authoritative body, in which they would inevitably [illegible] 'iich are now treated [illegible] in some aspects they [illegible] tate adhering to representation on such a body might be considered bound to carry out its decisions on questions relating to defence, mints, posts, telegraphs, &c., and would lose its present right to negotiate individually regarding them with the Paramount Power.

Moreover, before the recommendations of the body for joint discussion could have more than an advisory character, the voluntary basis on which the Chamber of Princes is constituted would require to be altered, and the States belonging to the Chamber would have to be bound by the decisions of the Chamber. Unless the Chamber is itself authoritative, it can obviously delegate no authority to bind the States to its representatives in the common body. As things are, no State is tied by any decision of the Chamber—not even the Ruler who has moved or voted for the resolution—and the result is to deprive their recommendations of much force and reality. I do not think the time is ripe for such a change, and the need for unity at the cost of some surrender of internal sovereignty has not yet been brought home to the majority of the States.

Similar objections would not apply if the body were advisory only, and a solution might be found on the following lines. It might be provided that when any Bill or measure affecting all-India interests, including those of the States, is introduced in the Legislatures, it should be referred at some stage for consideration by a joint advisory committee, consisting of nominees from both the British Indian Legislatures and of State representatives, nominated in the proportion of two-thirds from the Legislatures and one-third from the Princes' Chamber. The report of this committee, including the opinions of the State representatives, would be considered by the Government of India and the Legislatures before proceeding with the Bill or measure. Something of this kind would, I think, go far towards meeting the present grievance of the States that they

* Not printed

are not consulted before any decisions are passed affecting them equally with British India.

The Princes will wish to nominate their ministers as their representatives for joint discussion with the nominees of the Legislatures, and there need be no objection to this. The dread of being worsted in argument or being made to look foolish in debate with their social inferiors will prevent the Rulers from joining personally in any kind of joint discussion with British India representatives.

APPENDIX B.

Constitutional. Whether the States are in relations with the British Crown through the Governor-General or the Governor-General in Council.

Legal opinion appears to be unanimous that the States' relations are with the Governor-General in Council under the present Government of India Act. Since the Government of India Act was passed by the British Parliament, there appears to be no legal bar to Parliament assigning to a Dominion Government of India the paramount control of States now exercised by the Government of India. Having regard to history, however, I consider that it would be wrong and inequitable to do so. Our Paramountcy is the result of British conquest and British control in India and as such the States are ready to accept and recognise it. But it cannot rightfully be claimed by or conceded to any Indian Government in British India. No State would willingly recognise such a Government as superior either in power or force to itself, and I am doubtful if it could be successfully asserted without the help of British bayonets. The Government of India must remain predominantly British in direction and control, if it is to continue to be paramount over the States. When it ceases to be British and becomes Indian, then the States should either deal with it on terms of equal partnership, through some federal system, or should be given a separate channel of communication with the British Power, which alone they admit as superior to their own. This could be secured by providing that all matters relating to the States alone should be the concern of the Governor-General and not the Governor-General in Council. The question is not urgent so long as the Governor-General retains his present authority, but if the Statutory Commission recommends any large increase of powers to the popularly elected Chambers in the Central Government, it will become of immediate importance. If the Governor-General were given sole direction of matters affecting the States only he would require to have at his disposal—

(*a*) the necessary force to carry out his orders;

(*b*) some method of securing that the States' view should be considered on all-India questions. At present the powers of the Secretary of State are probably sufficient to prevent important decisions being reached without the States being heard. But if his control disappears, some form of Supreme Court should safeguard their interests.

APPENDIX C.

Position of the Government of India in supporting a Ruler against a demand of his subjects for a change in the methods of the State Government.

We are bound, in some cases by treaty, in all by usage since the issue of the Adoption Sanads, and by many Royal Proclamations, to maintain the Princes and Chiefs in their rights, dignities and privileges. Against any demand, therefore, on the part of their subjects to eliminate the Ruler and his House entirely and substitute some form of Republican or Communistic rule, the Prince could justly demand our assistance. Within this limit, if we were called upon to intervene either by the Prince himself or by conditions involving rebellion and the failure of the Prince's authority, we should, after assisting the Ruler to restore order, be in a position to give him authoritative advice on any changes in the method of Government obviously required by the situation. If the grievances of the people were against misgovernment only and not against the form of government, the remedy would be easy, and we should insist on the grievances being redressed, and the oppressive officials, if any were found to be responsible, being removed. If the grievances were against the form of government, and not against the misuse of any of its powers, then our advice would depend on our estimate of the nature and extent of the demand for change. If it were so widespread and popular that a refusal to grant some concession would amount to repression of a reasonable and almost universal demand, it would then, in my opinion, be our duty to advise conceding as much as might seem wise consistently with maintaining the Prince in his position as hereditary Head of the State administration.

In my view such a widespread demand for popular government in an Indian State is unthinkable for many years to come, provided that the autocratic or bureaucratic rule of the Prince is tolerably just and efficient. Agitators may stir up discontent against a particular tax or measure, but the people as a whole are little interested in the efforts of the few local intelligentsia to obtain political power. The latter can easily be won over by a prudent Ruler who gives them employment in the State service.

APPENDIX D.

Relationship between Paramount Power and the States.

On the general doctrine of Paramountcy in relation to the Indian States, I am in agreement with the exposition given by Sir Robert Holland in his book. He shows that it is inherent in most of the treaties and engagements and has been consistently confirmed by practice and usage. It is possible to illustrate its application by examples, but it cannot be defined except as a general right of intervention to secure the interests of India as a whole and the preservation of the States themselves. The limitations on its exercise are imposed by the Paramount Power itself and aim at securing to the States their internal sovereignty to the fullest extent consistent with these objects. To attempt to define or codify it

comprehensively is open to objection, both because a complete list of the practical restraints on their powers would be unpalatable to the Princes, and because new conditions may give rise to new occasions and new ways of the Paramount Power exerting its authority. If, however, the ultimate powers of the Paramountcy are reserved, it is possible to define the ordinary extent and methods of its exercise in specific instances, e.g. in dealing with railways, telegraphs, posts, &c. Also with growing improvements in the administration of the States and increasing realisation of all-India requirements on the part of the Rulers, much can now be secured by negotiation and co-operation which previously required cession of rights and jurisdiction.

APPENDIX E.

Policy of the Government of India in regard to the common defence of the Empire.

I have little to add to the memorandum prepared by the Secretary to the Committee. The States have accepted the principles contained in the Note on "Co-operation by State Forces" attached to Colonel Wigram's Appendix A, dated the 25th April 1921, to the Report of the Committee on the Indian State Forces Scheme, and the Durbars are generally in agreement with the proposals contained in Foreign and Political Department letter No. 42-I.B., dated the 5th January 1921. It seems to be admitted that the Indian State Forces are of greater importance in the defence of India and the maintenance of internal security than were the Imperial Service troops. From Durbars the only criticism I have heard are on two points :—

(*a*) The

to certain

(*b*) The

internal security, to obtain definite promises from Durbars regarding the troops they can lend for employment outside their States, when disturbance occurs. The Durbars dislike giving definite assurances, as they think it will deprive their offers of help of the appearance of spontaneity, when the critical moment arrives. They feel also that the assistance to be given must depend in a large measure upon whether their own States are dangerously affected at the time by elements of disorder.

Participation in the scheme is on a voluntary basis, but all States are bound to assist Government to the extent of their power if the security of India is threatened by external enemies or internal disorder. This is inherent in their position of subordinate alliance and co-operation. It is also due to the instinct of self-preservation, since anything threatening the existence of the Suzerain Power imperils the integrity of the States.

APPENDIX F.

During the last 10 years the Government of India have, in the interests of good government, intervened and offered advice to the Rulers of 17 States, namely, Hyderabad, Indore, Udaipur, Bahawalpur, Bharatpur, Bundi, Tonk, Idar, Khairpur, Jhalawar, Nabha, Chamba, Suket, Barwani, Dewas (S.B.), Jhabua and Malerkotla.

The nature of the intervention by Government in the cases of these States will be gathered from the summary below :—

Hyderabad.—In 1926, owing to serious discontent in the State, the Nizam was advised (1) to abolish the practice of taking Nazars except on fixed ceremonial occasions; (2) to abstain from interference with the judiciary in the State; (3) to dismiss certain officials from the State; (4) to appoint an efficient President and State Council; (5) to place the Revenue and Police Department under British officers selected in consultation with the Government of India; and (6) to settle the Paigah question on an equitable basis The Resident, in tendering this advice, was further authorised to hint in unmistakable terms that, in the event of Government's advice being unheeded, the question may arise as to the possibility of withdrawal or limitation of his powers.

Indore.—Early in 1926 the Maharaja Tukoji Rao of Indore was offered a Commission of Enquiry to investigate the question of his connection with the conspiracy by certain officials of the State to kidnap Mumtaz Begum, His Highness' favourite dancing girl, culminating in the murder of Sheikh Abdul Qadir Bawla in Bombay. His Highness, however, declined the offer and proposed to abdicate provided the enquiry was abandoned. This was accepted by the Government of India.

Udaipur.—In 1921, owing to the very serious state of affairs in Mewar, the Maharana of Udaipur was advised to resign active participation in the administration of his State. His Highness demurred and the Government of India accepted his proposal to delegate powers of administration to his son on certain terms.

Bahawalpur.—In March 1927 the A G.G., Punjab States, brought to notice that the Nawab, under the influence of the Home Member, was not giving proper support to the Revenue Minister selected by Government to watch their interests in connection with the Sutlej Valley project. In consequence of this and also other complaints His Highness was required to accept certain improvements in the procedure for the disposal of the business of the State and to appoint a European officer as the head of the State Police.

Bharatpur.—Recently the Government of India, as the result of the indebtedness of the State due to the extravagance of the Maharaja and general maladministration in the State, offered a Commission of Enquiry to the Maharaja. The offer was refused by His Highness.

full powers of administration, and to abstain from issuing orders direct, except in the case of minor departments,

Bundi.—In 1922-3 there was serious agrarian unrest in certain parganahs of the Bundi State due to maladministration. The Agent to the Governor-General advised His Highness the late Maharao Raja to effect improvements. This, however, had no result. The present Maharao Raja, at the time of his succession to the gadi last year, has been told that the Government of India expect him, to carry out the required reforms in the administration.

Tonk.—In 1920-1 there were serious disturbances in the Tonk State owing to Khilafat agitation and rise in the price of grain, alleged to be due to excessive export from the State, and British Indian troops had to be sent to restore order. The Nawab was advised to redress the grievances of his subjects, and was warned that in the event of a recurrence of disorder Government would not support him unless they were convinced that he was determined to redress grievances and to rule justly and wisely.

Idar.—In 1926, owing to serious misrule in the State and the unsatisfactory condition of the finances, the Maharaja of Idar was advised—

(1) to appoint a competent and fully responsible Dewan approved by Government, and to banish a certain family of officials from the State;
(2) to adopt a regular budget system and submit an advance copy of the budget to the Bombay Government for their information; and
(3) to appoint a Committee of Enquiry to enquire into the position and rights of his Pattawat Thakurs

Khairpur.—In 1925, owing to general maladministration and the unsatisfactory condition of the State finances, His Highness the Mir was required—

(1) to establish a Council with suitable personnel for the transaction of the State business, and to be guided by the advice of the European Member of his Council in regard to the reorganisation of the State finances; and
(2) to limit his personal expenditure in future to such sum as may be provisioned in the budget.

Jhalawar.—In 1921, in order to relieve the Maharaj Rana of Jhalawar from financial embarrassment, the Government of India accepted His Highness' proposal to retire and live in England on a suitable allowance for a limited period—the State being put under a European Administrator with full powers.

Nabha.—In 1923 there were serious allegations of oppression and methodical perpetration of injustice by the Maharaja of Nabha under the cover of legal forms. A Special Commissioner was appointed to enquire into these allegations, and, as a result of his report, His Highness the Maharaja of Nabha was permitted to sever his connection with the State on certain terms. The following are the more important of these conditions:—

(1) *The administration of the State will be handed to the* Government of India, and the Maharaja will formally abdicate in favour of his son when the latter comes of age;
(2) The Maharaja will in future reside outside the State on an allowance from the State;
(3) That the Nabha State will pay a substantial sum to the Patiala Durbar by way of compensation;

(4) His Highness' visit to certain specified places will require the previous permission of the Government of India; and
(5) That the Maharaja will remain subject to the obligation of loyalty and obedience to the British Crown and the Government of India.

These conditions were subject to annulment or modification in event of failure to fulfil any obligation.

Chamba.—In July 1922, after a course of excessive drinking ending in an attack of delirium tremens, the Raja of Chamba signed a deed of abdication. Three days after signing it he wished to rescind it, and as the Government of India had not taken official
allowed to rescind it on condition
e State. In June 1923 the Raja
that his health had been fully restored and requested that he may be allowed to resume charge of the administration. His Highness' request was agreed to subject to the conditions—

(*a*) that His Highness will employ a suitable British officer as his adviser, and
(*b*) that he will abide by the advice of the A.G.G. in all important matters.

Suket.—In 1924, owing to maladministration, there were a series of disturbances in the State and British Indian troops had to be moved to restore order. The A.G.G. suggested to His Highness to remain outside the State whilst order was being re-established. His Highness did not discuss the matter any further, but left the State, and the administration had to be assumed by the Agent to the Governor-General, Punjab States. Subsequently the Raja was allowed to resume the administration of the State on the following conditions:—

(1) That a Chief Secretary selected by the A.G.G. should be appointed by His Highness and that he should consult him in all matters connected with the administration of his State;
(2) That all orders passed and arrangements made by the A.G.G., or those deriving their authority from him during his absence from the State, will be confirmed and upheld by him and will not be modified or amplified by him without first consulting the A.G.G., and that in the event of disagreement the matter will be referred to the Government of India;
(3) That until the loan borrowed from Government to rehabilitate the State finances was repaid the budget will be submitted to the A.G.G. for approval; and
(4) That he will not proceed against any person concerned in the disturbances without first referring the matter to the A.G.G.

Barwani.—In 1922, owing to the extravagance of the Rana and the heavy indebtedness of the State, he was advised to ask for a European officer as financial adviser. In 1924, however, it was discovered that the Durbar had been guilty of practising deliberate fraud in regard to the Post Office funds which were lodged in the State Treasury. No drastic action, however, was taken against the Rana and His Highness was warned that in the event of his refusing to co-operate to the fullest extent in the endeavours of Governmen

to extricate him from the consequences of his extravagance, he will not be given another chance and that the Government will be compelled to offer him a Commission of Enquiry.

Maler Kotla.—Last year, owing to the indebtedness of the Nawab of Maler Kotla and complaints of general oppression in the State, the A.G.G was asked to convey a warning to him as to the extreme inadvisability of continuing these malpractices, and to ask him for a statement of his financial position and the measures he was taking to meet his liabilities and to remedy the abuses in the administration. The matter is still under consideration.

Dewas (*S.B.*).—The facts of the Dewas case are too recent to need mention here. This is scarcely a case of intervention in the *internal administration*.

Jhabua.—In August 1918 a serious warning was conveyed to the Raja of Jhabua to reform his administration, and he was advised to dispense with the services of his Private Secretary. There have again recently been complaints of misrule and His Highness has accepted the advice of Government to entrust certain powers to a Dewan approved by the Agent to the Governor-General.

In the great majority of instances Government have intervened to prevent flagrant maladministration, to protect State subjects from tyranny, to save an individual Ruler from destroying his patrimony by his capricious behaviour or utter disregard for the interests of his people. To abstain from intervention in such cases would be to ignore the obligations incumbent on the Paramount Power; for Government would be failing to preserve the individual State from disruption and would incidentally be suffering the reputation of the Indian States as a whole to deteriorate—a fact which is being brought home every day more and more acutely to far-sighted Rulers.

The degree of intervention in such cases has varied considerably. So far as regards Bundi and Maler Kotla, for instance, Government's interference has been extremely mild. In other instances, such as Nabha and Bharatpur, intervention has taken a more drastic form. Where the intervention contemplated amounts to actual restrictions on the power of a Ruler, the offer of a Commission is now necessary under the Resolution following the Chelmsford-Montagu Reforms.

The case of Dewas (S.B.) hardly comes into the picture. This is merely a domestic quarrel between father and son, and there has been no intervention in the internal administration, though the Ruler has been told that Government trust and expect him to administer the State with due regard to financial stability, &c.

And there are two cases which appear to fall outside the ordinary category. These are Indore and Bahawalpur.

Government's action as regards Indore was not due to internal misgovernment, but merely to a misdemeanour in British India in which the Ruler was implicated. But for the fact that his successor happened to be a minor, Government would not have taken any steps as regards the internal administration. Such action as was taken in this respect was accidental.

In the case of Bahawalpur, the action to which Government resorted was due to the financial interests of Government more than to any other consideration. The Bahawalpur State had, during a minority administration, embarked on an irrigation scheme requiring extensive financial assistance from Government

APPENDIX G

Railways.

On the construction of new railways the general policy of the Government of India, as set out in Foreign and Political Department Resolution No. 201 I, dated the 6th December 1923, is now accepted by the States as fair and reasonable. It is briefly that we can insist on the construction of lines of strategic importance through the States, but where the interests are those of commercial development only we now proceed by negotiation and co-operation. These are generally enough to secure the ends in view, as Rulers are now enlightened enough to realise the advantages to their States of railway communications. The need of control by the Railway Board and the Central Government over railway construction within the States is also generally admitted. Concessions now proposed regarding tramways within the States will mitigate any feeling that our control prevents States from developing their own internal communications.

The reciprocal arrangements recently laid down for obtaining land required for railways in the States and British India (vide Foreign and Political Department Resolution No. 493 I, dated the 30th March 1926) are also, I think, accepted as fair.

More difficult questions are those of—

(*a*) retrocession of jurisdiction on unimportant through lines where it is now exercised by us;
(*b*) the minimum jurisdiction which it is necessary to demand on railways passing through States; and
(*c*) jurisdiction on new lines constructed within States.

(*a*) has been fully examined on the assumption that only lengths of line approximating to a police station charge should be selected for the experiment of retrocession. As this is about 80 miles, it was found that only two such sections, lying respectively within a single State, could be chosen. The other considerable lengths of line lying within a single State's territory were portions of important through routes where a unitary jurisdiction is obviously imperative. On the whole, I am inclined to agree with Home Department that the experiment either on this scale or to the larger extent with a 50-mile minimum, as now suggested by the Princes, is not worth conceding. It would be difficult to gauge success or failure within a limited period; it would be embarrassing to withdraw the concession when once given, and it would inevitably lead to further pressing demands that the experiment should be extended. It is largely a question of sentiment with the States, and while due regard should be paid to this, the interests of the trading and travelling public seem more important. From their standpoint a single jurisdiction on a through line is unquestionably more convenient. I am, therefore, generally opposed to retroceding jurisdiction which has already been given up.

(*b*) Proposals have been made to meet specific difficulties experienced by Durbars in the matter of (1) Arms Act, (2) extradition, and (3) seditious meetings in railway limits within the States. If these are carried out they will go far to remedy legitimate grievances.

I agree generally with the statement regarding minimum jurisdiction as given in the Summary. Criminal jurisdiction must, I think, be complete when ceded, but it seems less clearly established that complete civil jurisdiction is required over railway lands. In the case of Navanagar railways the Jamnagar State ceded civil jurisdiction only to the extent of claims by traders and passengers against the railway administration, all other civil jurisdiction remaining with the Durbar. I have not heard of any practical difficulty being experienced from this limitation. It might be considered whether it might be conceded over other lines also. This, it practicable, would do something to meet the sentiment of the Durbars in the matter.

(c) Where new lines are constructed by a Durbar within its own territory, and where they do not form part of an important through route, I see little objection to jurisdiction being left with the Durbar. The Durbar's case is strengthened when the railway ends in the State and is not to be carried beyond it.

APPENDIX II.

Customs.

The separate Note by Sir J P Thompson appended to the Report of the Committee appointed by Lord Reading, dated the 4th June 1926, may be taken to represent the views of this Department.

It has emerged from the discussions that the claim of the internal States to share in the Imperial customs revenues cannot be justified either by treaty or past practice, and was not in fact put forward while the general rate of duties was low. On the other hand it seems to be admitted that the action taken on the recommendations of the Fiscal Commission, which has resulted in India adopting a protective tariff and the customs revenue rising to some Rs 43 crores annually, has given the States an equitable claim to a share in taxation of which a considerable quantum is contributed by their subjects. The argument that the States' contribution must be taken as a payment in return for protection and the general advantages consequent upon Imperial control in British India has receded into the background in view of—

(a) the specific right of many States to protection under their treaties,

(b) the share in Indian defence taken by States under the Indian State Forces scheme, and

(c) the difficulty of assessing the value of the general advantages of the British connection and of showing that they should be payable to British India alone and not to the Imperial Government in London.

The Committee considered, however, and Sir J. P. Thompson does not dissent from the view, that any question of sharing can only be considered if all the States are willing to abolish their local customs duties in the general interests of the trade of India and to join in some Zollverein scheme, including some method of common discussion and control of fiscal matters affecting both the States and British India. Presumably this would require to be on a voluntary basis.

I agree entirely that if any State is to be granted a share of Imperial customs, it must be prepared to give up its levy of internal import and export duties in the interests of the free movement of trade within British India But if the concession is to be postponed until all the larger States—I see it is proposed to limit the question to the salute States only—reach a common agreement to join in the Zollverein, it will mean that this admittedly equitable relief will be deferred until the Greek Kalends. I think the majority would come in on some such agreement, but some who already obtain considerable revenues from customs will hesitate, both doubting the financial advantage and preferring to retain the "sovereign" right of taxation on their own frontier.

Hesitation will be greatly accentuated if some form of representation on a joint body for control of all-India fiscal matters is considered an essential preliminary to the scheme, though it might be less pronounced if the joint body were an Advisory Committee only reporting to the British Indian Legislature. Most States at present are afraid of involving themselves in any definite constitutional connection with British India, for they realise that such adhesion would imply a reduction of their internal sovereignty so far as the questions of common discussion are concerned. I think they would prefer at present to hold aloof except by way of making representations to the Viceroy, and would not contest the right of the British Indian Legislatures to control taxation provided they are promised a share on the basis of the taxation contributed by their own subjects It does not seem justifiable to refuse an equitable share on this basis unless and until the States are ready, either individually or as a whole, to accept the definite constitutional connection Later on the States might wish to have some form of representation or share of control, but if they are given part of the profit their principal grievance will disappear, and there is little likelihood of their disputing the right of the British Indian Government to decide the form and amounts of customs and other all-India taxation. I can see no reason for denying the share to the States on the plea that a constitutional connection must be worked out first, except that it is difficult to give up any revenues at all, and the plea will result in an indefinite postponement of the question owing to the reluctance of the States to reach a unanimous agreement in regard to it. To share control is a privilege rather than a burden, and need not be forced upon any State against its will.

In Political Department notes it was proposed that the concessions might be on the following lines :—

(a) That all States which have by treaty compounded their obligations to contribute towards Imperial defence and have in return received definite assurances of protection, should be immune from the incidence of the Imperial customs tariff in respect of goods imported from overseas for consumption or use within their territories, provided that where any obligation rests on such State to assist the Paramount Power with its forces in an emergency, whole-hearted participation in the scheme for the reorganisation of State forces shall be an essential preliminary qualification for such immunity.

(b) That States not enjoying the treaty rights referred to above shall be eligible for similar immunity on participation in the State Forces scheme, up to 15 per cent. of their gross revenues.

(c) That all other States large enough to be considered as real administrative units—e.g. all States whose Rulers enjoy dynastic salutes—should receive immunity in respect of all articles imported for the use of the Ruler or for State purposes in general.

Subject to a further condition which I shall explain hereafter, I would suggest that this is fair and reasonable, and it should be extended at once to any State of the classes named willing to accept it on condition that it agrees to abolish in return all its local customs duties. It is useless to expect that all States will agree at once, but the advantages to the State subjects are so obvious that it would rapidly be extended to include all the internal States coming within the concession classes. The Zollverein would then be complete for all the larger internal States and the smaller ones remaining would be of little practical importance.

If a measure on these lines were agreed to, it would greatly strengthen our position *vis-à-vis* the maritime States, either in negotiating for control over their ports or in maintaining customs barriers against them. They would presumably have to be given terms based on their existing customs revenues with a percentage of difference based on the rise and fall of all-India customs receipts, if they are to be induced to come in. The alternative would be to maintain the present restrictions in spite of the hardship to the internal Kathiawar States that are cut off by the Viramgam line. Our present claim to tax all commodities crossing the line into British India on the ground that customs are a tax on consumption is, I think, weakened by our inability to follow the argument in dealing with the internal States on the British side of the barrier.

In estimating the share of the States it is probable that a basis of population only would be unfair to British India, where the people are more prosperous and consume a higher proportion of imported goods. Gross revenues might supply a more equitable basis of calculation.

It may be objected to the scheme that the concession will merely increase the revenues which some Princes squander on their own pleasures; and this criticism will certainly be used when the Legislatures become aware of it. To answer it effectively and secure the benefits for the subjects of the States, I would propose that the States' share sh
and agricultural improv
percentage of the States'
be spent on each of thes
withheld until the requisite standard has been reached. I think it would be practicable to impose such a condition and to ensure approximate if not complete compliance with it.

APPENDIX J.

Salt.

I see no reason to recommend any change in the present system, which is explained in the attached memorandum prepared by Mr. Fitze in 1926.

In brief, the policy of the Government of India is—

(a) to negotiate with States which have their own sources of supply, and

(b) to supply salt to the other States at the full rates—including duty—charged in British India. The question differs somewhat from that of the customs, for in the case of salt the Government of India commands the sources of supply and has the justification of any monopolist in charging the economic rate that the public, in British India and the States, will pay for its full reasonable demand.

Salt arrangements with Indian States.

The attached note prepared by Office relates almost entirely to States which are capable of producing salt and details the arrangement under which we have carried out our policy of securing control of salt supplies all over India and taking all measures necessary to protect our own salt revenue, paying compensation to all whose legitimate rights were infringed or reduced in the process.

2. The only arrangements with States which are not capable of producing salt relate to the abolition of transit duties and the prevention of smuggling—e.g. the agreement with Indore, Bhopal, &c., in Central India, Idar, Danta, &c., in Mahi Kantha, and the non-producing States of Kathiawar.

3. As regards non-producing States it seems to be a generally accepted principle that the Government of India has a right to tax the salt supplied for their consumption. Apart from a recent request from Kashmir (which has, of course, a special treaty position in regard to such taxation), I cannot find that any protest against this principle has been entered by any State or by the Chamber of Princes. It is universally in force, except, perhaps, in Kathiawar, where our agreements, doubtless owing to administrative difficulties, admit of the supply of salt by producing States to their non-producing neighbours.

4. We have even denied the claim of Baroda to supply from its salt sources in Kathiawar the needs of its territories in Gujarat, even if arrangements could be made to safeguard against such consignments going astray whilst in transit across intervening British territory. But this denial is based on very special considerations, namely, the rights which we claim to have inherited from the Peshwas in Gujarat, and it is probable that, but for this factor, the decision would have been favourable to Baroda.

5. It is also a general principle that all sources of supply for consumption in British India be retained in our own hands. This principle has recently been departed from on two occasions :—

(a) Baroda is permitted to ship salt from Kathiawar to be placed on the Calcutta market. But it has to pay British duty before it is shipped.

(*b*) We have agreed to purchase annually for a period of five years (and are probably more or less committed to similar purchases thereafter) 5 lakhs of maunds of salt produced at Kuda in the Dhrangadhra State.

This latter arrangement was made not because we wanted the salt, or because we admitted existing arrangements to be inequitable so far as salt was concerned, but because Dhrangadhra had embarked (as the result of war conditions) on an industrial enterprise which necessitated the production of huge quantities of salt as a raw material for, or bye-product of, chemical manufacture, and it was considered impossible to insist on the cessation of that industry. We therefore agreed to take over a large part of the salt thus manufactured. This concession is, however, not unlikely to have embarrassing results, partly because it leads to the accumulation of unwanted reserves and partly because it may encourage similar requests from other States. One such request has already been received from Radhanpur.

6. Our agreements with salt-producing States appear to have been framed on the assumption that we claimed no right to tax salt consumed therein. In an important note recorded by Mr. Corbett and concurred in by Mr. Fergusson and Sir George Barnes in 1920 it was observed that "it appears to have been generally admitted (except in Gujarat) that the States have the right to supply their own subjects from their own sources" But on the other hand, "we rigorously confine salt manufacture in British India to a few sources, . . . and the States have no reasonable cause for complaint if we consider that the safety of our own revenue compels us to refuse to admit their salt into British India." Mr. Corbett summarised as follows his proposals for a somewhat more generous policy :—

> "We must maintain our right to choose our own sources of supply, and we cannot agree to the import of salt from States into British India when such import would endanger our salt revenue. We must therefore hold the States to their existing agreements, but we should be prepared to consider the modification of any particular agreement in the light of modern conditions. Each case would be decided on its own merits, and the determining factor would be the safety of our salt revenue, regarding which the Government of India would be the sole judge."

He then went on to make the further suggestion that "the rates of compensation fixed in the agreements may now be out of date and an equitable readjustment might help to meet some of the objections to the present system which are being raised by the salt-producing States."

7. An occasion which might have been availed of to give effect to this latter proposal occurred in connection with the recent Gwalior case, decided in December 1924. It was, however, ruled that the agreement in which existing arrangements are embodied had obviously been framed so as to preclude any future claim on the part of the Durbar for revision on the ground that it had ceased to be favourable to them. "The agreement was not an agreement to share the growing proceeds of the salt revenue in Gwalior . . . but an agreement to secure them for the Government of India for a fixed payment."

8. However, in the Alwar case (decided in January 1926) the Government of India were prepared to revise the old agreement. The revision was asked for not on the ground of its being inequitable in modern circumstances, but solely in order to admit of the Alwar Durbar levying customs duties, which had been forbidden under the agreement of 1879. The case was not therefore really a "salt case," and all that was necessary was to decide to what extent the compensation fixed in 1879 should be reduced on the re-imposition of customs duties. The Government of India were prepared to revise the agreement, though they made it clear that, as "it had been formally entered into on a permanent basis," they were under no definite obligation to do so. As it was impossible to say what proportions of the compensation fixed in 1879 related to salt and customs duties respectively, the method adopted was to recalculate the compensation due on account of salt under modern conditions. This was done by estimating the amount of profits which would at present be accruing to Government (but for the payment of compensation on the existing scale) from the consumption of Government-taxed salt in Alwar. This was calculated at Rs. 85,000 Rs 3,300 was added as still due on account of the abolition of transit duties, and the future annual compensation was thus fixed at Rs. 88,300 as against Rs. 1,25,000 under the original agreement.

9. On the whole there seems little scope or occasion for anything of the nature of a general revision of our salt policy in relation to the Indian States. The circumstances of the States in regard to salt, and our agreements with them, vary widely and can only be considered on their individual merits. As regards the non-producing States there seems no reason at present to reconsider the existing principle under which we supply them with duty-paid salt and not with salt at the cost of production, though it is possible that some such demand may be formulated in the not distant future. As regards the States which are capable of salt production it is only on very special grounds that we can contemplate revision of existing arrangements. This statement is very clearly illustrated by the three cases (Gwalior, Dhrangadhra, and Alwar) to which I have referred in some detail above. In the two latter cases there were very special grounds which justified revision. In the Gwalior case there were no such grounds. It was merely contended that the compensation fixed in 1879 was out of date and inequitable owing to the intervening increase in population and the rate of consumption [illegible]

most categorical manner.

K. S. FITZE.

24.5.26.

Enclosure in above.

RAJPUTANA.

Between the years 1869 [illegible]
to salt were carried on with [illegible]
Central India. The ultima[illegible]
the salt duties throughout [illegible]
of the abolition of the inland customs preventive line. Another

important object was an increase in the supply of cheap salt for Northern and Central India. The first two steps necessary for the attainment of these objects were the acquisition by the Government of control over the extensive salt sources at the Sambhar Lake and the opening of railway communication between Rajputana and Delhi and Agra.

The Sambhar Lake.

The salt sources of the Sambhar Lake were partly the joint property of the Jaipur and Jodhpur States and partly the sole property of Jodhpur. They were managed by the British Government from 1835 to 1844 This was done without any agreement with the Rulers.

(i) *Treaty of* 1869 *with Jaipur.*—On the 7th August 1869 a treaty was negotiated with the Maharaja of Jaipur and ratified on the same date. His Highness agreed to lease to the British Government the right to manufacture and sell salt within the portion of the Sambhar Lake which was owned jointly by Jaipur and Jodhpur. The Maharaja authorised the British Government to fix the price of salt manufactured at Sambhar. But he became entitled to obtain for the consumption of his State any quantity of such salt not exceeding 1,72,000 maunds annually at 9 annas per maund. The Government also agreed to deliver annually 7,000 maunds of good salt, free of all charges, for the use of the Jaipur Durbar The Maharaja agreed to levy no tax or duty on salt manufactured or sold within the leased tracts, either there or in transit through Jaipur territory. The British Government agreed to pay the Maharaja Rs 2,75,000 per annum for the lease of the salt tracts. Of this amount Rs. 1,25,000 represented the Durbar's share in the proceeds of the salt manufacture and Rs 1,50,000 compensation for salt duties. These payments were to be made without reference to the outturn under British management. But if the sales and exports exceeded 8,25,000 maunds in one year, the Government would also pay to the Durbar royalty on the excess at the rate of 20 per cent. on the price per maund fixed by Government. It was settled in 1884 that the Jaipur Durbar should get three-eighths of the total royalty payable on excess sales of salt.

(ii) *Two treaties of* 1870 *with Jodhpur.*—The first treaty relating to the jointly owned tracts was concluded on the 27th January 1870. It corresponds with the Jaipur treaty, except that it omits the provisions of the latter relating to (*a*) the annual supply of 1,72,000 maunds of salt at 9 annas per maund for consumption in the State, and (*b*) the compensation of Rs. 1,50,000 per annum for the Durbar's duties on salt. The lease payment was Rs. 1,25,000 per annum

The second treaty relating to Jodhpur salt tracts was concluded on the 18th April 1870. His Highness leased to the British Government his right of manufacturing and of selling salt in a certain tract. The important considerations of the lease were (*a*) an annual rent of 3 lakhs to cover all subordinate claims, such as those of the Thakur of Kuchawan payable by the Government to the Durbar, irrespectively of the quantities of sales or exports, and (*b*) a royalty of 40 per cent. on the price per maund fixed by the Government on all sales and exports exceeding 9,00,000 maunds annually. It was settled in 1884 that the Durbar should get ⅝ths of the total royalty payable on excess sales of salt. The Government agreed to deliver 7,000 maunds of salt for the Durbar's use. The Durbar agreed to

levy no duties whatever on salt manufactured by the British Government within the leased tract, or on such salt while in transit through Jodhpur territory But the Durbar retained the power to tax salt sold for consumption within the State.

Agreement of 1879 *with Alwar*.—The Maharaja agreed to suppress and absolutely prohibit and prevent the manufacture of salt within the Alwar State and not to levy export, import or transit duty of any kind within the State. The Durbar were granted annual compensation of Rs. 1,25,000 and Government agreed to deliver annually at Sambhar 1,000 maunds of good salt free of all charges to the Durbar. In November 1923 the Durbar asked for a revision of the Salt Agreement, with a view to the re-imposition of customs duty within the State. The final views of Government were communicated to the Agent to the Governor-General in January 1926. In it the Government of India agreed to the Durbar's request, provided they were willing to accept a revised compensation of Rs. 88,300, with a free allowance of 1,000 maunds of salt as provided for in the agreement of 1879, or cash compensation in lieu thereof, if preferred by the Durbar. A revised agreement is to be prepared, if the Alwar Durbar accept the new arrangement.

Dholpur Agreement of 1879.—The Durbar agreed to suppress and absolutely prohibit and prevent the manufacture of salt within any part of the State and not to levy any tax, toll, transit duty or due on any articles exported from, or imported into, or carried through the State. The Government of India agreed to pay to the Durbar yearly Rs. 60,000. The Maharana agreed to pay out of this sum a yearly compensation not exceeding Rs. 3,000 to the Rao of Sir Muttra in consideration of his relinquishing all taxes, tolls and duties of every kind on all articles entering, leaving, or passing through his estates. The Maharana also agreed to pay to certain Lumberdars of several villages petty amounts. The State is allowed 300 maunds of salt free of cost and d[illegible] Dholpur Salt Agre[illegible] Durbar the right [illegible] pensation paid to [illegible] Rs. 25,788.

Lawa Agreement of 1879.—The Thakur agreed to suppress and absolutely prohibit and prevent the manufacture of salt within any part of his estate and not to levy any tax, toll, transit duty, or due of any kind on salt, sugar, or any other article whatsoever, whether exported from, or imported into, or carried through the Lawa estate. The estate was granted an annual sum of Rs. 700 as compensation and also 10 maunds of salt free of all charges yearly.

[illegible] Maharaja agreed to suppress [illegible] manufacture of salt within [illegible] levy no tax, toll, transit [illegible] deliver at Sambhar for the use [illegible] od quality free of charges every year. A sum of Rs. [illegible] was paid as compensation to the salt manufacturers of the State.

Bharatpur Agreement of 1879.—The Maharaja agreed to suppress and absolutely prohibit and prevent the manufacture of salt within

any part of the State, and to levy no tax, toll, transit duty or due of any kind whatsoever on salt, sugar, or other saccharine produce, whether exported from, or imported into, or carried through the Bharatpur State. The Maharaja declined to receive any compensation on account of the suppression. The Government, however, in consideration of the due observance of the other stipulations of the agreement, agreed to pay annually the sum of Rs. 1,50,000 and to deliver at Sambhar for use of the State 1,000 maunds of good salt free of all charges every year. The Maharaja was also given a sum of Rs. 2,26,000 for distribution to the salt manufacturers of the State as compensation. An annual payment of Rs. 500 is also made to the Durbar for relinquishing salt manufacture in two of their villages, Bahd and Bhalnra.

Jaipur Agreement of 1879.—The Maharaja agreed to suppress and absolutely prohibit and prevent the manufacture of salt within any part of Jaipur State, except at the Sambhar Lake and Kachor-Rewasa Sar, and to destroy and erase all other existing salt works, so that salt could not be made there. He also agreed not to levy any tax, toll, transit duty, or due of any kind, on salt, sugar or other saccharine produce, whether exported from, or imported into, or carried through the Jaipur State. Government agreed to pay Rs. 4 lakhs a year to the Durbar on account of the transfer to them (Government) of the 172,000 maunds of salt which the Durbar were entitled to receive from the Government at the rate of 9 annas per maund under Article 7 of the Sambhar Lake treaty dated the 7th August 1869. Under Article VII of the Agreement of 1879 the Maharaja agreed to permit and authorise the British Government to assume the management of the Kachor-Rewasa Sar, or salt sources, and of the works therein. The British Government were at liberty to close the said salt works, and would further be bound to close them at the desire of the Maharaja. So long as the British Government retained the management of the salt works, they engaged to pay yearly on account thereof, through the Maharaja of Jaipur, to the Rao of Khandela the sum of Rs 8,000 and to the Thakur of Kachor the sum of Rs 3,000. The latter payment was afterwards altered and distribution is made to give the Thakur of Kachor Rs. 1,854, the Thakur of Khur Rs 1,000, and Rs 146 to the Bhumias of Ralasta. An annual compensation of Rs. 2,309. 2. 7 is also paid to certain villagers on account of the closure of salt works. In June 1924 the Agent to the Governor-General intimated that the Jaipur Durbar had asked that the Salt Agreement of 1879 may be altered to enable the Durbar to levy duty on sugar and saccharine produce. The Government were willing to agree to the request, and enquired whether the Durbar would be prepared to forgo a portion of the compensation paid to them under the Agreement of 1879. The Durbar intimated that they did not propose to pursue the question.

Jodhpur Agreement of 1879.—The Jodhpur Durbar agreed to suppress and absolutely prohibit the manufacture of salt within any part of the Jodhpur State, except at salt sources administered by the British Government or worked under special licences from the British Government. The Durbar also agreed to levy no export or transit duty within the State upon salt upon which duty had been levied by the British Government. The Durbar leased to the British Government the following salt sources :—

Pachbadra. Didwana. Phalodi. The Luni tract

The Government agreed to pay the following compensation to the Durbar :—

	Rs.
(*a*) Annual lease payments for the four large salt works - - - - - - -	3,76,000
(*b*) Annual payment on account of losses sustained owing to suppression of Khari works in Khalsa land - - - - - - -	15,800
(*c*) Lump payment on account of losses of Jagirdars and landholders owing to suppression of works -	19,595
(*d*) Lump payment to Kharols and other salt manufacturers - - - - - - -	3,00,000
(*e*) Annual compensation for transit and export duty on salt - - - - - - -	25,000
(*f*) Annual payment on account of preventive establishment - - - - - - -	50,000
(*g*) Annual payment on account of "miscellaneous revenue and incidental emoluments" - -	50,000

For the use of the people of the State the Government agreed to supply 2,25,000 maunds of salt free of British duty and at a price not exceeding 8 annas per maund. For the use of the Durbar 10,000 maunds of salt free of all charges are annually delivered by the Government

Bikanir Agreement of 1879.—The Durbar agreed that salt would be manufactured in no place within the State, except on the salt works of Lonkaran and Chapar. The outturn of these works was limited to 30 000 maunds annually. The export and import of salt which had not paid British duty was prohibited; salt in transit through to beyond Bikanir when covered by a British pass was exempted from transit duty; and 20,000 maunds of salt from the British works at Phalodi and Didwana in Marwar were allowed for Bikanir consumption at preferential rates, i.e. a price not exceeding 8 annas per maund, and a duty at half the full British rate. An annual payment of Rs. 6,000 is made to the Durbar for preventing the illicit manufacture and export of salt from the State.

Mewar Agreement of 1879.—The Durbar agreed to suppress and absolutely prohibit and prevent the manufacture of salt within any part of the State. The Durbar, however, retained the option of reopening, after giving 12 months' notice to Government, works sufficient for the manufacture of not more than 15,000 maunds of edible salt annually. The agreement freed salt which had paid the Government tax from the Durbar's transit duties. The following sums are paid annually by the Government as compensation to the Durbar :—

(1) Rs. 2,800, as compensation for loss caused to the Mewar State and to certain landholders by the suppression of manufacture.

(2) Rs. 10,000, on account of charges connected with preventive arrangements.

(3) Rs. 35,000, on account of loss in the revenue derived from transit duties.

For the consumption of the Durbar the Government allowed the State to purchase 1,25,000 maunds of salt annually at the rate not exceeding 8 annas a maund, and subject to half the British for the time being; 1,000 maunds also being delivered annually free of all

charge to the State. Annual payment of Rs. 1,56,250 is now made to the Durbar in lieu of right to 1,25,000 maunds of half duty paying salt.

Sirohi Agreement of 1879.—The Durbar agreed to prevent absolutely the manufacture of salt within the limits of the State. No transit duty was to be levied upon salt upon which duty had been levied by the British Government. The Government agreed to pay an annual compensation of Rs. 1,800. For the consumption of the people of the State Government allowed the purchase of 13,000 maunds of salt annually at half the rate of the British duty for the time being. In 1881-2 the amount of salt was raised to 18,000 maunds, because 13,000 were found insufficient for the consumption of the State. In 1883-4 a cash payment of Rs. 9,000 per annum was substituted for the 18,000 maunds of salt

Jaisalmere Agreement of 1879.—The Durbar agreed to levy an extra duty of 1 rupee per maund on all salt manufactured in the State, but no duty on salt which had paid the British duty; the export of Jaisalmere salt into other States was prohibited. The amount of salt to be manufactured for consumption in the State was fixed at 15,000 maunds annually. No compensation was allowed to the Durbar.

Jhalawar Sanad of 1899.—The Durbar had to suppress and absolutely prohibit and prevent the manufacture of salt within the State and not to levy any tax, toll, transit duty or dues of any kind on salt, whether exported from, or imported into, or carried through the Jhalawar State. The compensation paid to the Durbar was fixed at Rs 2,250 annually A sum of Rs. 250 annually had to be paid to the Durbar for distribution to the Jagirdars as compensation

Karauli Agreement of 1882.—The Durbar agreed to suppress and absolutely prohibit the manufacture of salt. They also agreed to levy no tax, toll, transit duties or dues of any kind on salt, whether exported from, or imported into, or carried through the Karauli State. A compensation was fixed at Rs 5,000 annually The Durbar are also allowed 50 maunds of salt annually free of charges Compensation for losses of Jagirdars was fixed at Rs 694. 15. 0 per annum

Bundi Agreement of 1882.—The Durbar agreed to suppress and absolutely prohibit the manufacture of salt within their territory They also agreed to levy no tax, toll, transit duties or dues of any kind on salt, whether exported from, or imported into, or carried through the Bundi State. The Durbar were granted compensation of Rs. 8,000 annually.

Tonk Agreement of 1882 —The terms are the same as those for the Bundi State The total compensation paid is Rs. 20,000.

Shahpura Agreement of 1882 —The terms are the same as those for the Bundi State, except that the total compensation was fixed at Rs. 5,000 annually

Kotah Agreement of 1882.—The terms are the same as those of the Bundi Agreement, except that the compensation was fixed at Rs 16,000 annually An annual compensation of Rs. 3,175 was also allowed to the Durbar for distribution to Jagirdars. A lump sum payment of Rs. 15,905 was also made for distribution to certain Jagirdars for abolition of the Mappa duties on salt The State is allowed annually 300 maunds of salt duty free.

Central India.

[illegible]

export of salt from the State was prohibited. The Durbar also agreed to levy no duty, toll, nor duty of any kind within the State on salt upon which duty had been levied by the British Government. The British Government agreed to pay a sum of Rs. 10,000 annually as compensation.

Samthar Agreement of 1879.—The manufacture of any salt in the State except at certain saltpetre works then existing was prohibited. The quantity of salt to be manufactured at these works was fixed at 1,500 maunds annually. The State agreed to levy no toll or tax on salt on which duty had been levied by the British Government. The Durbar were allowed annually free of cost and duty at the Samthar works 500 maunds of salt. In 1884 a cash compensation of Rs. 1,450 per annum was substituted for 500 maunds of salt.

Indore, Bhopal, Jaora, Sitamau, Ratlam, Dewas (Senior), Dewas (Junior); Sailana, Rajgarh, Narsingarh, Agreements of 1882.—The Durbars undertook to abolish all transit duties of whatsoever description on salt passing through their territories. The Government in return agreed to pay annually Rs. 61,875, 10,000, 2,500, 2,000, 1,000, 412. 8 annas, 412. 8 annas, 412. 8 annas, 618. 12 annas, 618 12 annas, respectively, to the Durbars as compensation.

Gwalior.

[illegible]

of 54,000 maunds in any one year. The Durbar also agreed to prevent the export of any salt manufactured in the State, and the import into it of any salt other than that on which duty had been levied by the British Government. They also agreed not to levy any tax, toll or duty on the salt upon which duty had been levied by the British Government. The British Government in return agreed to pay annually a sum of Rs 3,12,500 as compensation to the Durbar. In 1924 the Gwalior Durbar reopened the question with a view to having the above agreement revised and the amount of compensation increased. The proposals were, however, rejected.

Bombay.

Gujarat.—At the introduction of the British rule in Northern Gujarat, there existed five salt works along the eastern shore of the Lesser Runn, one in the estate of the Desai of Patri, three in the territory of the Chief of Jinjuwara, and one in that of Chief of Radhanpur. On the salt manufactured in these works the Peshwa's Government had levied an excise, by means of their own officers, in addition to the dues received by the different Chiefs. It was thought desirable to acquire the exclusive control of these works, and the rights of the Chiefs in them were purchased, in Patri and Jinjuwara works about 1822, in the Radhanpur works not till 1840

The Chief of Patri receives compensation of Rs. 10,522 and the Thakurs of Jinjuwara Rs. 8,566 annually. An agreement was concluded with Radhanpur in 1840 under which the Nawab ceded all rights and concern in the Anwarpur salt pans to the British Government in lieu of cash compensation of Rs 11,048 per annum. He receives, free of duty, 262½ maunds annually for the Durbar's use. The Nawab has recently submitted a memorial asking for the cancellation of the above arrangement, and to be allowed to manufacture salt in his State. The question is under consideration.

States in Kathiawar.—After protracted negotiations agreements were concluded in 1883 with the following States —

I.—*Maritime States*	II.—*Inland Salt-producing States*	III.—*Inland non-producing States*	
1. Junagad	1. Dhrangadhra	1 Dhol	14 Virpur Kharedi
2 Nawanagar	2 Than Lakhtar	2 Palitana	15 Kotra Sagani
3. Bhavnagar	3 Limbdi	3 Rajkot	16 Pal
4. Morvi.	4 Wala	4 Vankaner	17 Gadhka
5 Jafrabad (Janjira)	5 Malia	5 Gondal	18 Jalia Devani.
6 Porbandar	6 Bajana.	6 Wadhwan.	19 Govridad.
		7. Jasdan	20 Bantwa (Gidad)
		8 Sayla	21. Dedan
		9 Bantwa	22 Mengni
		10 Chuda	23 Vasavad
		11 Muli	24 Bagasra
		12 Lathi	25 Vichavad
		13 Jetpur Bilkha	26 Kuba

Under their agreements the Maritime Chiefs (I above) agreed—

(1) that the production of salt in their States shall not exceed the quantity required to meet the demand for consumption thereof within Kathiawar;

(2) that no salt except sea salt shall be manufactured within their States;

(3) that no salt shall be exported from their States by sea into any place outside Kathiawar, and that no salt shall be imported into their States except salt which has paid the salt tax of the British Government;

(4) that they will prevent to the utmost of their ability the export of salt from Kathiawar by land, either into another foreign State or into British India;

(5) that they will not enlarge or make any material change in the existing salt works nor open new work or salt resources in their State nor permit the above by anyone else without the previous consent of the Government of Bombay;

(6) that the salt works and deposits in their States shall at all times be open to the inspection of the Political Officers

The agreement with the inland salt-producing States (II above) was similar to the above except for the omission of condition (3). In the Dh[illegible] , the manufacture of [illegible] itherto produced. The [illegible] and the Durbar agreed [illegible] at the Kuda works in [illegible] agreement was revised again in 1922, and the Dhrangadhra State was allowed to manufacture salt at the Kuda salt works on certain conditions. The

Government of India agreed to purchase annually 500,000 maunds at 3 annas 6 pies per maund. The annual payment of Rs. 7,000 was stopped.

The salt agreement with the Bajana State was concluded in 1895. The State agreed (1) to absolutely prohibit the manufacture of salt within the limit of the State, (2) to prevent the export of salt from Kathiawar either into British India or into any other Indian State. The State also agreed to prevent the collection or removal of salt which might be spontaneously generated in their territory save and except such quantity as might be required *bonâ fide* for consumption within the limits of the State.

In their agreement the inland non-producing States (III above) agreed to obtain the salt required for consumption from some recognised source; to limit the stock of salt to quantities required for local consumption: and to prohibit export.

OTHER BOMBAY STATES.

Kutch.—Under the agreement of 1885 the Durbar undertook to prevent the exportation from Kutch, either by sea or by land, of salt manufactured or spontaneously produced in the State to any part of British India or any Indian Native State or any foreign European Settlement in India. The Durbar also undertook to so regulate the export of salt from Kutch to foreign ports outside of India, and to place such export under such safeguards and checks as to prevent any salt so exported finding its way into any part of British India or of any Native Indian State or any foreign European Settlement in India.

Cambay.—Under the agreement of 1881 the Nawab of Cambay undertook to close all the salt works in Cambay and to discontinue the manufacture of salt, and to keep all such works flooded and otherwise effectually rendered incapable of yielding or producing salt. The Nawab also undertook to prohibit and prevent the importation into and exportation from his territory of any salt other than British duty paid salt. In return the Government agreed to pay him compensation of Rs. 40,000 per annum and also a free supply of 500 maunds of salt annually.

Janjira (also called Habsan).—An agreement was concluded with the Nawab of Janjira in 1884, whereby the Nawab agreed—

(1) to suppress all salt works in Habsan, and to prohibit the manufacture and collection of salt earth in his territory;

(2) to prohibit the import of any but British excise salt covered by British permits;

(3) the Nawab was allowed to purchase at the British excise salt works at Uran salt to the amount of 10,614 maunds annually, without payment of duty, for the domestic consumption of inhabitants of Habsan;

(4) the British Government also agreed to supply to fishermen salt for fish curing at 10¾ annas per maund, the fish curing yards being under the control of British salt officers;

(5) the Nawab was also given an annual sum of Rs. 13,000 in consideration of his effectually preventing "all contraband trade or practice, of smuggling salt, opium and liquor."

DECCAN AND SOUTHERN MAHRATTA COUNTRY.

Manufacture of salt in the States and Jagirs of the Deccan and Southern Mahratta country is absolutely prohibited, and the amounts noted below are paid to some of them as compensation :—

	Rs.	A.	P.
Jath	1,118	0	0
Daphlapur	114	11	2
Phaltan	2,010	9	9
Akalkot	142	0	10
Aundh	1,045	1	7
*Miraj (Senior)	62	1	2
*Miraj (Junior)	6	12	0
*Kurundwad (Senior)	1,193	9	3
*Jamkhandi	1,490	12	9
Savanur	32	0	0
Sangli	233	10	6
Konhar Rao Wadikar	8	12	0

* Set off against tribute.

Savantvadi.—Salt works in the Savantvadi State have also been closed on payment of compensation of Rs. 5,500 per annum.

Khairpur—The Mir of Khairpur has agreed to stop all salt productions in his State in return for receiving from neighbouring British works a supply of salt sufficient for the consumption of his people, and at cost price *plus* the cost of carriage, the retail price of the salt in Khairpur being not less than the rate current in Sind.

In 1848 an agreement was concluded with the Rana of Wao and his relations under which they were to prevent all sale and export of Ghassya salt brought from the Runn in their taluka and not to permit its import or transit through it from other talukas or districts, for which they were to receive annually the sum of Rs 361.

In 1861-2 engagements were concluded with the Idar State and

BARODA.

Baroda in Kathiawar—Under the agreement of 1887 the Baroda Durbar were permitted to manufacture "natural salt" for local consumption in the Okhamandal and Amreli Mahals districts and for export to foreign ports outside India, and they undertook to prevent any salt being exported into British India or any other State or any foreign European Settlement in India

In 1917 a representation from the Baroda Durbar was considered by the Government of India, and after consultation with the Bombay Government the Durbar were permitted to export Baroda salt from Okhamandal and Kodinar to British India on the following conditions, viz. :—

(*a*) that the export be limited to the port of Calcutta ;

(*b*) that all salt be bagged as a protection against smuggling, which could not be prevented if the salt was loaded in bulk ;

(*c*) that all salt be loaded under the supervision of officers of the Bombay Salt Department ;

(*d*) that duty be levied at the port of embarkation ;

(e) that accommodation only at the Sulkea Salt Golas would be provided, on the same terms as for Bombay and Madras duty-paid salt.

The request of the Durbar that they might be allowed to manufacture and export salt to Billimora for the consumption of their State subjects in the Gujarat Districts of Navsari, Baroda, and Kadi, or that as an alternative they should be granted an assignment of Rs. 3½ lakhs annually, representing the amount of duty paid on
A British salt consumed by Baroda subjects in Gujarat, was rejected on the ground that the exclusive right of the British Government to establish salt works and manufacture salt throughout Gujarat was derived from the Peshwa, and they (the Government of India) were therefore not prepared to admit any claim as a right by the Durbar to import salt into Gujarat free of duty, or in the alternative for a refund to cover the duty foregone on the quantity of salt consumed by Baroda's Gujarat subjects.

The Durbar on two later occasions asked for modification of these [illegible]

was not extended to consignments transported in country craft. Condition (c) above was waived on the understanding that the Durbar would maintain certain accounts and would issue a permit to accompany each consignment.

Baroda in Gujarat.—The statement at "A" above also covers Baroda in Gujarat. A further representation was received from the Baroda Durbar two years ago, claiming the right to manufacture salt in their Gujarat possessions. The views of the Resident at Baroda on the representation were received in October 1925, and the Bombay Government's remarks on the case are now awaited.

PUNJAB STATES.

Bahawalpur.—Under the agreement of 1879 the Bahawalpur Durbar is bound (1) to suppress the manufacture of salt, (2) to prohibit the consumption of salt on which British duty had not been levied, (3) to abolish all transit duties other than octroi and excise dues. The Government of India in return undertook to pay the Durbar Rs. 80,000 annually.

Mandi State.—Salt of an inferior quality is produced in Mandi, and is to some extent exported to British territory. Price of the salt is 10 annas a maund, and the Raja also levies a duty of 10 annas a maund. Out of the amount of duty a share is paid to the British Government in consideration of the Mandi salt being exported to British India. The share payable to Government was reduced from two-thirds to one-half, but it was finally settled that the share would vary with the rise and fall of the duty on salt in British India.

MADRAS STATES.

Travancore and Cochin.—Prior to 1865 these States had monopolies of salt manufacture in their own States By the convention for admitting the ports of these States to the position of British Indian ports, both States agreed to adopt the British India selling price of salt and to raise the rate at inland depôts "so as to place the salt of Cochin and Travancore and British India on the same footing in the

market." The States were to import salt from British India on the same terms as those on which it was imported into British Indian ports.

In 1901 the Government of India gave their consent to the Travancore Durbar to import 4,000 maunds of salt a year from the Tuticorin factories on certain conditions. This amount was increased, for special reasons, to 6,000 maunds for the year 1904–5 only.

Banganapalle.—The manufacture of earth-salt was stopped in 1880–1 and the Nawab is paid Rs. 3,000 annually as compensation.

Pudukkottai.—For the suppression of manufacture of earth-salt in the State the British Government pay an annual sum of Rs 38,000 as compensation. It is optional with Government to cancel the arrangement if they find it to be to their interests to do so.

HYDERABAD.

Small quantity of earth-salt is manufactured in the Nizam's territory. In 1875 the Nizam's Government prohibited the export of salt from Hyderabad to British territory.

MYSORE.

It was arranged in 1878 that the manufacture of earth-salt should not be generally suppressed in Mysore, and in 1880 that licences should be taken out for each salt pan, that the number of pans should not be increased, and that the export of earth-salt in any direction beyond the limits of the State should be prohibited.

APPENDIX K.

Mints and Coinage.

A Memorandum describing the policy of the Government of India is attached.

I see no harm in admitting that the right to mint belongs to the internal sovereignty of the Princes, provided it is clearly understood that the Paramount Power, in the interests of the people of the States and of India as a whole, must be allowed to restrict its exercise. No mints already closed should be reopened and every effort should be made to encourage the States, which still retain the right, to abandon it in the interests of their subjects. My experience of the fluctuation of the kori currency in Cutch has shown me how disastrous a local currency can prove to the trade of the State when controlled by a Durbar ignorant of the elements of economics.

If there is a profit on the minting of the Indian coinage, the States that use the
claim to share it o
population or rever
States sharing any profit from Paper Currency. Since notes are issued against the credit of the British Indian Government, there may be good grounds for resisting any such claim until the reserves in the States become similarly liable.

If there are no profits in minting British Indian coinage, the States should be furnished with such figures as may be required to convince them of the fact.

When any State expresses its readiness to close its mint and convert its coinage, it should be offered generous terms as an inducement to do so.

Enclosure in above.

Mints and Coinage in Indian States.

The Government of India admit that in theory the Indian States possess the right to mint. They, however, regard the unification of coinage in India generally as a matter of great importance; and for the attainment of this object they consider it desirable that the number of mints in Indian States should be reduced as far as possible. Accordingly, while not pressing for the abrogation of the privilege of coining money by those States which have continuously enjoyed it, or in any case where the mint has been recognised by treaty, the Government of India have consistently taken the view that the question whether the right should be revived in any particular case in which it has fallen into abeyance *is a matter for them to decide.*

The policy of the Government of India in discouraging local coinage is based, not on the effect that such coinage is likely to exercise on their own currency, but (1) on the prejudicial effect of a local currency on the economic interests of the inhabitants of the States themselves, and (2) *on the belief that a uniform currency is* an important agent in producing a sense of national unity.

The Government of India derive no fiscal advantage from the currency reforms in Indian States. On the other hand they accord financial assistance to States wishing to substitute British currency for their local coinage by exchanging British rupees for the local [illegible] p to a reasonable [illegible] now open are at [illegible] avancore, though some other States also coin silver and copper in a minor degree. In States which retain the right to coin money the policy of the Government of India is to ensure that—

(1) mints should be established and worked only at the capital of the State;
(2) they should be worked under the direct control and supervision of the Durbar;
(3) the Durbar should not permit the establishment of mints in Jagirdars' estates;
(4) the Durbar should manufacture merely their own coin and in no case the coin of other States or of extinct ruling families; and
(5) the Durbar should not mint copper coin of a character not easily distinguishable from British coins.

Nowadays the Government of India as a general rule avoid currency *reforms in Indian States during the minority of their* rulers.

APPENDIX L.

Dealings between Indian States and Capitalists and Financial Agents.

The summary of this case as now proposed by the Government of India, after discussion with the Standing Committee, and in the light of recommendations made by Local Governments, Political Officers and Durbars, is as follows ;—

1. It is very desirable in the interests of the Government of India and in its own interests that a State intending to issue a public loan* should give information beforehand of its intention to do so, in order to avoid the possibility of such loans clashing with similar operations by the Government of India, and so as to give the Government of India an opportunity of offering friendly advice on the subject.

* For the purposes of this paragraph the expression "public loan" is not applicable to a loan intended to be raised entirely within the limits of the issuing State and open only to residents of that State, though the Government of India would always be glad if details of such loans are supplied to them as a matter of courtesy.

2 Loans to Ruling Princes and Chiefs by European British subjects without the consent in writing of the Secretary of State in Council or of the Governor-General in Council or of a Local Government are forbidden by section 125 of the Government of India Act. The previous concurrence of the Government of India is required by States entering into loan transactions with alien persons or firms.

3. Inter-statal loans or loans by one Ruler to another require the consent of the Government of India.

4. The acceptance of a directorship in a company in British India by a Ruling Prince or Chief is considered undesirable and derogatory to the position of Indian Princes. This principle does not, however, apply to the case of officials of an Indian State representing the State on the Board of Directors.

The only objection to the summary now made by the Standing Committee is that they wish the words "and where such a loan is made without such consent, it will be at the lender's own risk, and Government will not ordinarily intervene to secure its repayment" added to the end of para 3. The words were previously in the Summary, but were deleted because they appeared contradictory of the first sentence and made the whole paragraph seem meaningless The Standing Committee have not yet accepted this explanation, but it seems to me to be reasonable and as such should be adhered to.

The restrictions contained in para. 2 of the Summary are, in my opinion, fully justified by past experience. Without their consent Durbars can readily be exploited and swindled, while dishonest Rulers may lend themselves to transactions resulting in loss to ignorant shareholders in Great Britain or foreign countries.

APPENDIX M.

(a) Posts.

Since a unitary postal system is in the best interests of I[illegible] a whole and of the inhabitants of the States themselves, I cons

that it should be adhered to and the Conventions already granted to five States should not be extended to others.

In theory the States would seem to have an equitable claim to share postal profits, but since all profits are used to extend communications and reduce postal rates, there is apparently no profit to share. The Government of India should be prepared to produce any statistics which Durbars may reasonably require in order to establish this position.

The grant of free service stamps to States cannot be defended on financial grounds if there are no profits to distribute. But the concession where given was an inducement to accept postal unity and should not be withdrawn except on terms voluntarily accepted by the States concerned.

The Mail Robbery Rules should be maintained. With the new procedure suggested in para 7 of the revised Summary the main objection of the States, that compensation is claimed as a matter of course, should be sufficiently met. I think it would be dangerous to withdraw the rules until the police arrangements in the States generally have reached a higher standard than at present.

(b) Telegraphs.

A unitary telegraph system worked by the Central Government is undoubtedly best in the interests of the public in the State and should be encouraged. I think it is reasonable to take Posts and Telegraphs profits together. The States accepting the British Posts and Telegraphs have, in my opinion, an equitable claim to share in the profits ; b

With regarc

dated the 7th

Resolution of

I do not think that amendment (a) suggested in the last paragraph of the Committee Report is required. It restricts the right of States to construct independent systems within their own territories. As long as it is laid down that an independent system cannot without the assent of the Government of India extend beyond the limits of a particular State, it does not appear that Imperial interests have much to fear. In my opinion, the restriction is not worth pressing.

Amendment (b) gives the Government of India practically unfettered right to open an Imperial telegraph office in a State irrespective of the Durbar's wishes. If the right were confined to occasions on which the interests of India as a whole were considered to be materially affected, it should, I think, suffice.

EVIDENCE RECORDED IN LONDON.

Minutes of Evidence given before the Indian States Committee at Montagu House, Whitehall, S.W.1.

Wednesday, 25th July 1928, at 2.30 p.m.

PRESENT:

SIR HARCOURT BUTLER, G.C.S.I., G.C.I.E., *Chairman*
Colonel the Honourable SIDNEY C. PEEL, D.S.O.
Professor W. S. HOLDSWORTH, K.C.
Lieutenant-Colonel G. D. OGILVIE, C.I.E., *Secretary.*

His Highness the MAHARAJA OF PATIALA

The Right Honourable SIR LESLIE SCOTT, K.C., M.P., appeared on behalf of the Standing Committee of the Chamber of Princes

Chairman It has been decided, as you are aware, that the meetings of this Committee will continue to be so far informal that the public are not admitted and that reports will not be sent to the Press, otherwise everybody connected with the Inquiry will be admitted to the proceedings and will be welcomed here I think that we are all expecting Sir Leslie Scott to open the case for those Princes whom he represents, and I would ask him to let us know exactly whom he does represent.

Sir Leslie Scott My answer, Sir, to that question is that I represent the Standing Committee of the Chamber of Princes and that they represent at present some 68 of the States who are Members of the Chamber in their own right, some 35 of the States which are entitled to representation in the Chamber, and some 110 to 120 States, some of which are entitled to representation in the Chamber and some of which are not.

When I say that the Standing Committee represents those States I mean that those States have sent or are sending their material in answer to the Questionnaire to the Indian States Committee through the Standing Committee of the Chamber and are asking the Standing Committee to look after their interests

When I said "at present" I meant that that is the last list which Colonel Haksar, who has been looking after this side of the matter, was able to give me this morning In the autumn the list may be rather larger, but it is sufficient to show the Committee at this stage that the Standing Committee have been expressly instructed by a very large number of the States together

Chairman Will you let us have the list

Sir Leslie Scott It will be convenient for me to hand in a copy at once This is the list that Colonel Haksar gave me this morning, if

I may use a colloquialism, may I add the letters "E. & O. E." at the foot of it? I have not had the opportunity of going through it with Colonel Haksar this morning. (Document handed in—Appendix "N".) *A revised list was subsequently received from Sir Leslie Scott and is shown as Appendix "O".*

As this, Sir, is the first occasion that I have had the opportunity of appearing on behalf of my clients at a formal sitting of the Committee as distinct from the informal meetings which I had the privilege of attending once or twice in India, it may be convenient for me to make one or two general observations as they have a bearing on the character of the representations that I shall put before the Committee. In the first place, the Committee is, as you will all agree, not a judicial tribunal adjudicating on issues in dispute between contending parties; it is appointed for the purpose of a double function, obtaining knowledge in certain fields of law and fact, and making recommendations with a view to the better adjustment of the day to day relations between the States and British India in financial and economic matters

The Princes for whom I appear share the view that I hold myself that, before such a Committee with such functions, ordinary advocacy of Counsel would be out of place. They and I feel that the Inquiry is one in which everybody taking part should make their contribution to the ascertainment of the true legal position, ascertaining the true facts and making in an impartial way their proposals for any adaptation of the relations by way of new machinery or otherwise that may be thought desirable.

The Princes for whom I appear very definitely approach the problem, not merely from the point of view of enforcing, and merely enforcing, their own rights and privileges, but in order to make their contribution for the good of India as a whole, including British India, and for the good of India as a part of the British Empire.

A large part of that wider aspect may be outside the scope of your Terms of Reference, but the attitude of the Princes towards that part of it which does lie within your Reference is the same as their attitude to the wider part which lies outside. Their fundamental standpoint is that they ask for a full and effective recognition of all their existing rights, whatever they may be, and by their existing rights I mean those existing rights—using the word in the most general possible sense—to which they are truly entitled, whether they are in actual enjoyment of them or not. They do not ask any more than their existing rights, and they submit for the consideration of the Committee and the Crown that they ought not to be offered less.

If their rights can be truly ascertained they will be satisfied with that ascertainment On that basis they say it will then be possible to consider the conduct of their relations with British India and the Crown, and for them, and for you, and for the Government, and all those concerned, including the public, to form a wise judgment as to what alterations it is politic and wise to make in daily practice in their relations with the Crown and British India as they are to-day, and what proposals are wise for the future.

Their view, which they submit to the Committee, is that whatever the proposals may be for the adjustment of relations, they should be based upon a true recognition of their rights, provide for their due preservation, and at the same time contain suitable machinery for reasonable,

harmonious and successful co-operation between the two sides of India, the States' side and the British India side.

That, I think, summarises the attitude which the Princes take up before you at this Committee. They recognise, of course, that your Terms of Reference are not unlimited. It is not for you to make a new Heaven or a new Earth, or a new British Empire, and they realise that it is for you to define what are the Terms of your Reference.

You will remember, Gentlemen, that it was arranged informally between yourselves and me at a meeting in Delhi that it would probably be convenient to divide the Princes' case, as I indicated it to you then, into three stages, the constitutional position, stage one; the Princes' criticisms upon the working of the relations in practice, stage two, lastly, their constructive proposals. It was also arranged that stage one should be taken this month, stage two in the autumn and stage three a week or so after stage two They have accordingly adjusted all their own personal plans and their work on the assumption that that general *modus operandi* would be carried out

Stage one, the constitutional position, raises general questions of law. The answer to the question as to what the constitutional position is might, of course, be that it is partly legal and partly not legal, or, on the other hand, it might be that it is wholly legal I have considered very carefully how I could offer the greatest measure of assistance to the Committee on that first stage, and I came to the conclusion in my own mind that it was important to follow the policy towards the Committee adopted by the Princes generally which I have adumbrated in my opening remarks, to give the Committee the greatest possible assistance on what seemed to me to be the true legal position I realised that mere advocacy on the legal position would be out of place here. There is only one lawyer on the Committee; I do not think he would have been particularly pleased with a purely legal argument from one side only, particularly in view of the fact that so far as I know you are not going to have a legal argument from the other side and, therefore, I came to the conclusion that the position was *quoad* an advocate quite exceptional and that I must not attempt anything in the nature of advocacy The most practical way of doing that, I thought, probably was to suggest to the Princes that they should instruct some of the best Counsel in the country to advise jointly with me on what the legal position in fact is, a purely impartial opinion of a scientific kind. I warned the Princes that they were taking a risk, they might get an opinion which was thoroughly adverse to all the views they cherished but they took the risk, and in its corporeal shape the "risk" was handed to you yesterday in the shape of an advance proof of the Opinion (Appendix "P") I have got copies of the signed Opinion here now They are the same, with the exception of a few commas in the final alteration, as the proof. I will let you have them afterwards, if I may The signatures to the Opinion, in addition to my own, are those of Mr Stuart Bevan who, like myself, is now a Member of Parliament, as well as a King's Counsel, Mr Wilfrid Greene, whose name is equally well known, Mr Valentine Holmes and Mr Donald Somervell

I am sorry that the work involved in writing that Opinion was so heavy that it took us longer than I had anticipated and it was not finished in time to give you copies of the final proof till yesterday

I had hoped to let the Committee have it a week in advance and I can only apologise and say we were working very hard on it during the last two and a half months and that I could not get it to you before. As you quite appreciate, I am sure, in dealing with general principles on a subject which is such a virgin field from the lawyer's point of view as the one in question, there is a great deal of selection to be done in order to produce a reasonably terse Opinion and, therefore, I do not, honestly, apologise for taking so long on it, though I regret very much the inconvenience caused to the Committee through my not being able to let you have it a week earlier.

Chairman: We quite understand that.

Sir Leslie Scott: The result, of course, is that the Committee have had a very short time to digest it and it may be that you have not all of you had the opportunity of fully considering it during the short time it has been in your hands, and it occurred to me, therefore, that to-day it might be useful for me to answer any preliminary questions that have occurred to you for the purpose of clearing up ambiguities in it. If there is any point anywhere in it upon which any Member of the Committee would like to put a question, I will endeavour to answer it by way of elucidation. As regards the application of the legal principles enunciated in the Opinion to the concrete facts of the various States, I suggest and indeed respectfully ask that that should stand over until you get the facts. To attempt to-day to apply the legal principles to hypothetical facts would merely mean waste of time because it would really involve doing to-day what must be done in connection with the actual facts when I give you the concrete cases in October And there is another question, which Professor Holdsworth particularly will appreciate: there is a question, so to speak, of the application of the Opinion to derivative or secondary principles of law that are involved in the primary principles That is not exactly the same as applying the principles as enunciated to the concrete facts, but it is something half way between the enunciation of the primary principles and their application to individual facts. I am sure that Professor Holdsworth will realise that That also, it seemed to me, would come much more appropriately when the Committee had had the opportunity of carefully considering that Opinion and when the evidence is before the Committee. I, therefore, suggest that probably the convenient course would be that as I go through the evidence in October, upon which, as a matter of procedure, I am going to make one or two suggestions to the Committee, I should then deal with the application of the principles to that evidence and also, at whatever moment which then seems to be convenient to the Committee after hearing me, deal with any derivative or secondary implied obligations which arise from the primary ones that we have expressed in the Opinion.

You will observe that we have endeavoured, so far as we could, to limit ourselves to first principles in the Opinion. We have not completely done so, we have given one or two derivative principles by way of application and illustration and so on, but, broadly speaking, the Opinion is one on first principles If that meets with your general approval, I shall be glad I will go so far as to say that I have assumed that it probably would meet with your approval because it is the only way of saving time.

Chairman: Yes I think the Committee would be very pleased to deal with the case in that way.

Sir Leslie Scott: I am very much obliged to the Committee for taking that view. I am sure it will save time in the end. Now, may I say a few words about the evidence in October? I saw Colonel Ogilvie the other day unofficially—or perhaps I should say informally—and he asked me how long it would take, and not knowing then, or now, what degree of condensation would be possible, I said four weeks of five days a week and full sittings Now that, I realise, is a proposal that would not command the consent of the Committee with quite the same willingness as my last proposal, and what I want you to allow me to do, Sir, if you will, is this. I am going to devote a larger part of the interval between now and October than I like to think to classifying the evidence and getting it into order so that it shall convey a definite meaning We have got the concrete cases from the various States, with copies of the original correspondence and documents that came into existence at the time, so that they speak for themselves and they necessarily, being contemporaneous documents, tell the truth, as all contemporaneous documents do, or to the extent that all contemporaneous documents do I speak from the English point of view, Sir. That will enable you to see what it was that took place on each occasion, the occasion being one in which the State says "The system did not work well for these reasons My sovereignty was cut down improperly, the Government assumed rights that it had not got," or whatever the criticism may be Where the documents do not themselves contain the whole story on their face, I have arranged for a supplementary statement by way of explanation to be added, to make them intelligible That supplementary statement, of course, will be open to criticism We shall in that way get a large number of cases illustrating a great many of the aspects of your Questionnaire that you sent out When analysed they will fall under a large number of different heads more or less connected with each other, and I intend, so far as is feasible, to bring them into relation with the legal opinions expressed in the document handed to you yesterday so as to make them illustrative of the Opinion and enable me to apply that Opinion to the concrete facts and give it reality and substance What occurred to me as possible was, that you would allow me to make an explanatory statement to you about the type of evidence that I was putting before you and then let you have the whole of the material, typewritten or printed, so that you could go through it at such times in the day as might be individually convenient to the different members of the Committee by themselves, that you would let me know as soon as you have read it and then I could make my comments on it at a time of the day convenient to the Committee and that would very greatly reduce the number of Meetings that it would be necessary for the Committee to have in the shape of formal Meetings Something of that sort What exactly the procedure should be I am not yet in a position to suggest to the Committee, but something of that kind, I tho[illegible] would save an immense amount of time and I could probably [illegible] you a good deal of the criticism in the shape of a written document from me classifying the material, indexing it, classifying it under cro[illegible] heads and so on, and giving you in a written form what might [illegible] a good deal longer to explain if I did it orally and then if [illegible]

would be a little indulgent to me in giving me the opportunities that I want of criticising and explaining, I think that would result in a great saving of time for everybody.

Chairman: Yes; the Committee would be glad if you would present the case in that way.

Sir Leslie Scott: I am much obliged to you.

Chairman: And the more documentary evidence you can give us beforehand, the better.

Sir Leslie Scott: I would consult with either the Chairman or the Secretary.

Chairman: In all these matters the Committee wish you to present the case in the way that would best commend itself to you and your clients

Sir Leslie Scott: I am much obliged to you. I shall be going abroad for a short term myself, but I shall be back in the middle of September and if Colonel Ogilvie will let me know what his movements are, so that I can communicate with him at a time and place convenient to himself, then I can arrange the details with him—at some time and place convenient to him, probably early in October.

That is all I want to say at this stage about the evidence, except this, I hope to give you certain memoranda of an historical or economic type which obviously can be read conveniently, quite apart from the sittings of the Committee, and, in addition, there will be probably a very little oral evidence My impression is that this is not a case in which much oral evidence will be useful, but, again, on that I want, if I may, not to indicate any view at the moment beyond that very vague one, because, until I have been into the details of it, I cannot tell to what extent a witness or two might be helpful to the Committee, but my idea is to limit the oral evidence rather rigorously. That would be stage 2, and I understand from Colonel Ogilvie that somewhere about the 15th October would be convenient to the Committee That will suit me.

Chairman. We cannot, as a Committee, sit every day; Professor Holdsworth has to be in Oxford and Colonel Peel has some engagements, but we can arrange, no doubt, a series of dates that would be convenient to all parties

Sir Leslie Scott: I am much obliged

Chairman: It would be convenient to all of us, I think, to begin somewhere about the middle of October, have the first Meeting then.

Sir Leslie Scott: Perhaps it is not convenient to name the exact day at the moment.

Chairman. There is no objection as far as I am concerned.

Sir Leslie Scott: Could we have just a provisional date, subject to exigencies? The afternoon of Monday, October 15th?

Chairman: Yes.

Secretary: What time?

Colonel Peel: Provisionally?

Sir Leslie Scott: Provisionally.

Chairman: Is the time 2.30 convenient?

Sir Leslie Scott: Yes; that is very convenient, I think, 2.30. The further sittings we will arrange as may be convenient and desirable

Chairman: I think if we say now provisionally Monday, the 15th October, the first Meeting, and in between now and then, and when

you yourself have got the case more clearly in your mind than you have now, we might arrange a few subsequent days

Sir Leslie Scott: If you please. Then that disposes of that aspect of the procedure. Now, there remains just a word or two to say upon the third stage, the recommendations or concrete proposals I have had the privilege of seeing the correspondence that has passed between the Chairman of the Indian States Committee and the Maharajadhiraja of Patiala on the subject of the sittings of the Committee, and I observe that you indicate, Sir, certain limits within which your Terms of Reference permit you to make recommendations and treat them as rather definitely and closely restricted I, of course, on behalf of the Princes, necessarily and rightly accept whatever your ruling is upon that and, therefore, in making any proposals on that, as a consequence of the evidence, I shall keep them on stage 3 within what, I understand, are the limits of your Terms of Reference, as understood by you, and not ask you to consider matters which are outside those Terms of Reference I say that because, informally, in India you were given, on behalf of the Princes whom I represent, certain draft proposals as a basis of discussion, and I refer to that document simply by way of illustration as one that goes outside your Terms of Reference, as you understand them, and I shall adapt the proposals, when I come to the third stage, to what I understand is your view of your Terms of Reference

Now, Sir, those are the only remarks that I desire to make to the Committee at this stage, because I do not think I should be employing time fruitfully by adding to them, but if there is any question on the meaning of the Opinion, any ambiguity in it upon which any Member of the Committee would like to ask me a question, I shall be very glad. Of course, Professor Holdsworth will realise from the technical, professional point of view, that this is simply and solely an Opinion.

Colonel Peel: I am an ignorant layman What do you mean by "simply and solely an Opinion"?

Sir Leslie Scott: It is not advocacy, it is mere opinion. That is to say, the lawyers who have signed it say, "We think that is the legal position" and, like any other scientific men, in expressing an opinion they may be right or they may be wrong That is what I meant. I believe them to be right, but——

Chairman: As you realise, I have not had time to study this with the closeness that it deserves, but I have read through it and I certainly think that it is free from ambiguity throughout as to what it means, so at the present stage I have no question to ask Should any doubts as to the meaning arise in my mind, I will bring them up the next time we meet

Sir Leslie Scott: If there is any question of ambiguity that occurs to the Committee between now and our Meeting in October, if a question can be formulated, I will see that it is answered by all the Counsel concerned. Perhaps Colonel Ogilvie would, in that event, write a letter to me about it.

Professor Holdsworth: I find the Opinion quite easy to understand You will understand that I only read it through yesterday and, of course, when I read it carefully, there may be various points with which one may disagree and may wish to ask questions as to

how certain results are reached, and you cannot do that until it has been properly studied

Sir Leslie Scott: I entirely agree, and I shall limit my first point to the pure question of ambiguity. If there are any ambiguities in it, I suggest that the Committee should ask Colonel Ogilvie to write me a letter Possibly Professor Holdsworth would settle the terms of the letter and then I will get it answered. But, of course, the other question is a totally different one. All really good lawyers always agree—it is the only Profession in which there is no disagreement in matters of opinion—but assuming that there may be a disagreement——

Colonel Peel: The outside world does not know whether they agree or differ.

Sir Leslie Scott: ——assuming there may be points in the Opinion in which the whole of the Committee do not agree, if there are any questions to which the Committee would like me to address my mind, and ask the other Counsel concerned to address their minds, before the October Meeting, I say, on behalf of the Princes, we shall be very glad to meet the views of the Committee so far as we can, in that sort of way. I cannot pledge myself in advance, but our attitude will be one of anxiety to clear up any difficulties as well as doubts.

Professor Holdsworth: I have nothing to say now, I think probably I shall have some queries to raise when I have studied it more closely

Sir Leslie Scott Whichever is thought more convenient, I will attend before the Committee for cross examination by Professor Holdsworth or we will answer written questions.

(*The Committee conferred*)

Chairman There is only one thing I should like to say and that is that, at the next Meeting, or one of the next Meetings of the second stage, I shall be in a position to tell you what view we hold as to the actual scope and range of the Terms of Reference that have been made to us. When we have been with you through these intricacies of fact illustrating the principles that you have put before us to-day, we shall be, I think, in a better position to consider what the third stage should be and what exactly is the interpretation that the Committee place upon the Terms of Reference which have been made to them.

Sir Leslie Scott. I am much obliged for that intimation. Then that is all I have to say to-day, Sir, and a sitting on Friday will not be necessary.

Chairman: We are much obliged to you, Sir Leslie, for placing your case before us so clearly and concisely. We meet again on the 15th October and if there is any point that arises in between that requires consideration or adjustment, that can form the subject of correspondence.

Sir Leslie Scott: I apologise for indicating that a Meeting on Friday might be necessary, but when I was asked I really did not know, and since then I came to the conclusion that brevity would be better

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Minutes of Evidence given before the Indian States Committee at Montagu House, Whitehall, S.W.1.

Monday, 15th October 1928, at 2 30 p.m.

PRESENT:

Sir HARCOURT BUTLER, G C.S.I , G C I.E , *Chairman.*
Colonel the Honourable SIDNEY C. PEEL, D S.O
Professor W S. HOLDSWORTH, K.C.
Lieutenant-Colonel G D. OGILVIE, C I E , *Secretary.*

Their Highnesses the MAHARAJAS of KASHMIR, PATIALA and NAWANAGAR, and His Highness the NAWAB of BHOPAL

The Right Honourable Sir LESLIE SCOTT, K.C , M P , appeared on behalf of the Standing Committee of the Chamber of Princes

Chairman Sir Leslie Scott, when we last met I said that we would let you know what would be our interpretation of our terms of reference in regard to what had been called the constructive proposals as to the future. We met last week and we decided that while those proposals went in a certain sense beyond and outside the scope of our inquiry, still they did constitute a possible means of adjusting the relations between the Paramount Power and the Indian States We therefore decided that on that ground you should have every opportunity to present your case in full before the Committee, and a letter was sent to you to that effect. That means that there is no part of the case that you have foreshadowed to us which is not to be presented to the Committee if you wish to do so I think perhaps the best way of opening the proceedings to-day will be to get some idea as to the length and scope of those proceedings, so as to fix dates and hours that will be convenient to all concerned If you can indicate to me the probable time that you would like in order to place your proposals before the Committee, we shall be very happy to consider them and to endeavour to meet your wishes as far as possible

Sir Leslie Scott Sir, on behalf of the Standing Committee of the Chamber of Princes and those Princes who are acting with them, I desire to thank the Committee for the intimation that you have just given As you say, Sir, Colonel Ogilvie was good enough to write a letter to me on Friday last intimating that that was your view Unfortunately I was away in the country and I only personally got that letter late yesterday evening We had considered that question very carefully and appreciated that the Committee was entitled to every assistance that we could give them on the subject of the constructive proposals, and we had a meeting yesterday afternoon before I had seen the letter I had intended to inform the Committee to-day at the outset of the view taken by the Standing Committee on the matter [illegible] hearing the decision of the Committee We did not know then [illegible] the decision would be not to receive the constructive propos[illegible]

receive them within certain limits. The decision given by the Committee to-day is very helpful because it gives us a completely free course as to the line we should take. We have, of course, addressed our minds closely to the terms of your reference, and particularly Part 2, which alone asks you to make recommendations. We are anxious to give you all the help that is in our power in the way of suggestions on that subject.

The letter from Colonel Ogilvie referred to a particular document known as Document 4, and I want you to allow me to say a word or two about that in order that our position in the matter may be made quite clear with a view to seeing what the proceedings of the Committee are likely to be. That document, which, if I may call it so, was a domestic document for the consideration of the Princes themselves, was brought into existence in India for the express purpose of enabling the Conference of Princes in Bombay to formulate their ideas. They were expressly informed at that meeting that the document was to be regarded only as a basis of discussion, and, as such, they authorised the Standing Committee to deal with it in England. As Colonel Ogilvie says in his letter, we gave to the Committee in Bombay copies of that confidential document, as we were anxious for you to know the kind of thoughts which were passing through our minds on that subject, though, of necessity, the document was handed to you informally and unofficially and in confidence. Unfortunately, by some breach of confidence in India which occurred after you and I personally had left India, with which, of course, the Committee could have no possible connection, the document was handed by some unauthorised person to the Press, and, as I suppose you know, was printed *in extenso* in an Indian newspaper, and was published in a way that led people in India to think that that was the definite proposal of the Princes.

I desire to correct that impression. The document was, as I have said, nothing more than a basis of discussion, but the Committee, both in India and after leaving Bombay, were good enough, for the convenience of the Standing Committee and of their Counsel, to intimate to us your view that such a scheme as that lay largely outside your terms of reference. That intimation, so courteously given to us, of course very much influenced our action subsequently. Its most important consequence, so far as your procedure is concerned, has been that from that time till to-day we have devoted no more time to that particular aspect of the constructive proposals and we have not, therefore, pursued further the question as to whether those particular proposals are the proposals which on consideration the whole of our constituent members, if I may use the expression, approve.

The result, of course, is that I shall not put that particular document forward at all. I should not have authority to do so, even although it may be—I express no opinion on this—that the great majority, or all of the Princes concerned approve of it, because it may also be that some of them do not approve of it. That is a matter that has not been investigated. But it is quite clear, as you have said to-day, that the question of constructive proposals, in the sense of machinery of some sort, must be relevant to the case the Princes are presenting, because they are saying the system as it is is wrong and works badly and ought to be changed. Therefore, any proposals as to the kind of change to be made are relevant for the purpose, and, no doubt, that

is the reason the Committee have taken the view that they have intimated to-day. The practical conclusion, therefore, is that I shall not trouble you with detailed proposals. I shall not put forward anything in the nature of a draft Constitution for regulating the relations of the States with the Paramount Power, that is to say, with the Crown, advised by the Government of the United Kingdom, and with the Government of British India, that is to say, the Governor-General in Council. I shall not attempt a detailed draft Constitution; but we are none the less grateful for to-day's intimation, and, subject to the limiting considerations as to the form in which we will put the material before you, we will do our best to give the Committee such assistance on the general principles which, in our opinion, ought to govern any such constitutional machinery as it may be in our power to suggest to you. I hope that that will meet with your approval. That is obviously a task that will take less time for the Committee than the consideration, or at any rate, the explanation, of detailed proposals

As regards the time that the Committee will take over the work, I should ask you to allow me to make a few observations in order that you may appreciate the considerations which, in my submission, affect it. What led to the appointment of the Indian States Committee historically was, no doubt, as it is known, the consciousness of the Government of India that the States had certain, what I will call for want of a better word, grievances of a real character, and that the Government had a desire to remedy those grievances, if possible That was recognised by the Montagu-Chelmsford Report. It was recognised by the conduct of the Government in 1921, in sending out the circular of questions to all the States of India, asking them to return details of what they considered their grievances to be, which led up, as you will remember, to what were known as the Twenty-three Points Then followed meetings between the Political Department and groups of Princes first, and then, after the constitution of the Chamber, with the Standing Committee of the Chamber After some experience of those attempts to agree upon certain formulæ or expressions of rule of practice, the States felt, as you will remember, that that was not enough, and, I think it was in April, 1927, that they asked the Viceroy whether he would not appoint a Committee definitely to investigate the position. He did so; and I believe that that was the genesis of your appointment. After your appointment, and when you were in India, and when I was in India, the Viceroy told all the States that he wanted them to send in material to the Standing Committee of the Chamber in response to the Standing Committee's request in the freest, frankest and fullest manner possible, and without the least fear that any untoward results would flow from their perfect frankness I personally took the view in India that it was no use at all for the States to complain in general terms about grievances—they must prove them. Consequently, the Standing Committee took the view that they had to establish the rights of the States by ascertaining and making clear what their legal position is, and, secondly, to prove by adequate evidence that those rights had been infringed, and prove that by evidence that would really carry conviction. The Committee, if I may respectfully say so, took a most reasonable view as to

the kind of evidence that would be appropriate for such an investigation as yours, and agreed with the suggestion which I ventured to put to you that as much as possible of the evidence should be of a written character and as little as possible of an oral kind. We, accordingly, as you know, sent out a circular to all the States with the approval of the Committee, inviting them, by the consent of the Committee, to send in their answers direct to us if they thought fit. In July last I had little conception of what the amount would be that would come in answer to that request. An organisation was set up in India under Colonel Haksar, and the Princes are very greatly indebted to the work put in by him and his assistants in collecting evidence. They succeeded in collecting a very large volume before Colonel Haksar arrived in this country just before your last sitting in July. He made it a point, in accordance with my instructions, of doing his best to verify every document, to see that every statement of fact was, as far as possible, supported by an actual contemporaneous document. You will appreciate that it is impossible always to do that for every fact, but, on looking at the evidence when you see it, you will agree with me, I am sure, that, broadly speaking, that policy has been carried out. I thought in July that there would be no difficulty in getting the whole of the evidence ready and printed and submitted to you to read it two or three weeks before the sitting of the Committee in October. I little knew what I was in for The stream continued flowing and flowing in increasing volume from then onwards, and a very large amount of evidence has come forward of a very striking character taking it as a whole—a very striking character—throwing an immense light on very many aspects of the problem that you have to consider. But the bulk has proved many times greater than what I thought it would in July. We have had the very greatest difficulty in getting ready at all for the sitting to-day I felt that it was essential that we should do it and it has been done, but I regret very much that the evidence was not ready in time for you to read it before to-day's sitting. By hard and continuous labour we have compressed the bulk into the smallest compass possible for your convenience, and so small is it that I feel sure the Committee will be anxious to read it from cover to cover. That which I hold in my hand is a small select residuum which we feel sure you would like to peruse. (Sir Leslie Scott handed in four sets, five volumes each, to the Committee—not printed.) You must regard that as typical and illustrative and by no means complete I am sorry to say that even that is not all that you will have, because it is still coming in, and some very important things have been coming forward We will let you have it in the smallest compass we can as a statement as early as we can.

In order to assist in following the presentation of the evidence as we desire to present it to you, we have prepared for the Committee an introduction in two parts, historical and economic. That was sent to the Committee in proof form towards the end of last week Did the Committee receive that document?

Chairman: Yes, thank you

Sir Leslie Scott: I think you will agree that the introduction is a useful one as presenting a bird's eye view of certain general aspects of the question under both your heads of reference, the historical

bearing more directly on the first part of your reference and the economic more directly on the second. I feel sure you will have read it with interest The mind to which the Princes are principally indebted is Colonel Haksar's, and I feel sure you will permit me to add that the Princes, and I trust the Committee also, feel indebted to him for a very interesting and illuminating piece of work. The introduction has been the work, in part, of critical minds who have assisted, but in the main it is his It represents the general view of the Princes on the subjects dealt with in the two parts of the introduction, though, of course, each Prince is not tied to every single word of it

You will appreciate that that was a proof, it was got off as quickly as we could to you, and Colonel Haksar asks me to say—and I would like to say it for myself—there are certain alterations and additions that will still have to be made. I think there are one or two in various places, but I felt sure that you would like to have it, even though it was not quite final, rather than not have it at all. These volumes of evidence only reached me complete in the country late on Saturday night, and, of course, they represent the print of work that I have been through in the earlier stages, during the Vacation others have been through it and I have been through it and I know generally what is in the volumes I have been working at it hard to be ready for to-day and I propose to start on Volume I to-day, shortly The evidence is not as perfect or as clearly put together as I should like it to be, as Counsel, simply because we have not had time to do the arrangement as clearly as it ought to be done I fear—indeed I feel certain in my own mind—that there is no short cut by which to ascertain the contents of those volumes except by reading a large portion of them The necessity of looking at the details arises from the character of our case What we seek to do by this evidence is to establish a number of inferences or conclusions which will show that the present system by which in particular the economic and financial relations are conducted is wrong and must be changed In the course of the examination of the evidence, the real character of the relationship to paramountcy, both as it is put in force in practice, and as, in our submission, it ought to be, will emerge For both purposes, both the economic and the paramountcy aspect, I desire, as Counsel, to submit to the Committee the explanations and the inferences and comments that arise upon the perusal of the evidence, and as it is a system that we are attacking it follows necessarily that the weight of the evidence will, to a great extent, depend upon its cumulative character. In order to show that individual instances are due to a system, it is necessary to exclude the possible explanation that they are due to personal causes or accidental considerations of the moment. If I produce a large number of instances all to the same effect and illustrating the same point, then it almost necessarily follows that it is a system that is the cause rather than different explanations in each individual case That is why the cumulative character of the evidence is so important here. And that really is the importance of the presentation of the case that the Standing Committee desire to make to the Committee It is to show that there is a system which is at fault

I want, so far as I possibly can, to select cases, and then, having taken one or two cases under the different heads, to merely indicate what there is in the other cases for shortness—to refer to them very

shortly. As I take the cases I propose to make my submissions upon them, as to their bearing on the legal principles which are contained in the Opinion. You will notice as you read through that some of the cases are expressed as claims for redress Would you please regard that simply as form? Every State has been informed quite clearly that you have no powers to grant any relief or remedy of any kind, and therefore, although the cases may be in the form of application for relief, will you please merely consider the facts that are stated in them as illustrations, as indicated by you in your Questionnaire?

The question arises also of evidence given direct to the Indian States Committee by States for whom the Standing Committee are not acting. As you are aware, certain States have not associated themselves with the Standing Committee and that fact, I think, has led to some degree of misinterpretation perhaps in India To my knowledge and to your knowledge the case submitted by those States to the Committee is often in its broad outline, and in many cases in many details, identical with the case that the Standing Committee is presenting to you, and that very fact is not without significance Although the guiding hand framing the case, advising as to what the real case is, is different in all these different States and in the States represented by the Standing Committee, the fact that they are all putting forward many common views goes to show that that common view has a big backing of truth. As an act of courtesy we have received copies of a good many cases submitted to the Committee direct from big States and small States. As the case for the Standing Committee is that the system is wrong, it would be a great assistance to the Standing Committee, and to me as their Counsel, if the Indian States Committee saw their way to allowing us to see the evidence that they have had from other States I do not ask for a decision upon that suggestion at this stage, Sir, but obviously the value of the contribution which we can make to your work would be increased if, after considering our evidence, we had an opportunity of looking at the kind of evidence that you have had from the other States.

The similar observation is to be made in regard to the official view about what have been called political practices I will make a submission to you in regard to that at a later stage. I mention that because those two subjects both seem to me to be relevant to the consideration of the evidence bearing upon your Inquiry. I would suggest that both questions should be postponed till after you have considered our evidence. If it meets with your approval—and I venture to think it probably will—I only propose to make one speech, and not two, and therefore I want you to allow me to say nothing to-day further but to go straight to the evidence.

I only want to make these two observations. We gave you the opinion of Counsel on the law, as regards the general principles, last July. It would be of assistance to me in documents if, at some stage convenient to yourselves, you could intimate to me any questions that have occurred to the Committee to put to me in connection with the legal views there expressed. I should like to have those views in print in order to give them the mature consideration which I ought to give to them; so that if they were given orally to me I might wait until after

I had seen them in print in the proceedings and thought them over—or, if it would be more convenient to the Committee, to let me have some questions in type at your convenience The same observation applies to the Historical and Economic Introduction to the evidence Should you think fit in that case to put any questions for elucidation or to point to any passages upon which you feel doubt as to the accuracy of anything contained, all I can say is that we should be grateful to you. I appreciate that I am not entitled to demand either the one or the other. I merely intimate that, should the Committee see their way to doing it, it would assist the Princes in the preparation of the submissions that they desire to make to you

Sir, I come now, having indicated the task that is in front of us, to the question of the time it is likely to occupy, and I feel it is exceedingly difficult to make that forecast Possibly *solvitur ambulando* will be the only possible answer I can make After a day or two's work on these volumes, when you see the kind of material that there is in them, then I shall hear your views and I will make my submissions, but I am bound to say quite definitely, as Counsel, that I think it is vital that you should understand the contents of the whole of these volumes I use that phrase designedly, because it does not mean reading every word of them, but it does mean knowing a great deal about the contents, and on that I know the anxiety of the Committee will be to give the Princes the conviction that you are anxious really to understand that case that they wish to present to you, and that, even although the task may be onerous, you will not shrink from it if it is necessary for that end I am about to take the evidence; I shall make no set speech now, but when we have been through the whole of the evidence, at a later stage, after an adjournment, I will make my submissions in the form of a speech to you and deal at the same time with the constructive proposals If you would arrange to give me a fortnight between the close of the evidence and the final hearing—it will be short, definitely quite short, three days, or that sort of thing—that is what the Princes would like It is a big task; it is probably a bigger task than any of us anticipated If that meets with your approval I will go straight into the evidence.

What I propose to do with the evidence is to select cases, draw your attention to the leading features of the different cases and refer to the principles as we go along to explain them, doing it as shortly as I can. I believe I satisfied you by my dealing with the matter in July that I am anxious to save time as far as possible

Chairman · Before you begin the evidence there is just one question I want to clear up and that is, is that list of the States which you represent and which you sent Colonel Ogilvie complete, or do you want any additions to it or subtractions from it? May we take it as complete?

Sir Leslie Scott It is very nearly accurate I meant to have asked about it last week. I only thought of it this morning at 12 o'clock and I telephoned and asked I will let you know to-morrow, but I know there are some additions

Chairman As you are aware, the Committee has various duties outside this Committee We have considered what days a week we can sit and what will be the most convenient hours It is obvious that a

matter of this importance will not be carried through by breakneck speed and a daily sitting would be too great a strain on all of us We propose, therefore, to sit three days a week; the days convenient to us are Monday, Tuesday and Thursday, and the hour convenient to us, which will enable us to do our other work outside this Committee, is 3 30 in the afternoon. I take it that three hours a day is quite as much as we can do.

Sir Leslie Scott: From 3.30 to 6.30?

Chairman: From 3.30 to 6.30. I hope those times will be convenient to you.

Sir Leslie Scott: Thank you, I am much obliged to the Committee for their intimation Their Highnesses desire me to put this point before you. Of course, they are anxious to get back to India to continue their normal function of governing their States and they wondered whether it would be possible to make the daily hours a little bit longer. If it will be possible to get in four hours they would be very grateful. It is very difficult, I agree

Colonel Peel: It would be impossible to sit more than three hours.

Chairman: That we will settle later, to-morrow we will sit at 3 30.

Sir Leslie Scott: May I now draw attention to the first page of your copies, a document called "Scheme of Arrangement"? If you would just look at that first. That is very nearly the same as the Questionnaire sent out by the Standing Committee in India to the different States for the purpose of getting information The headings have been altered verbally to a very slight extent and I think one or two supplementary headings have been added The Volumes follow that order and I hope to morrow to let you have an index page giving under these titles A (a) i, A (a) ii a and so on the names of the States that have sent in material under that head and the page of the book where that State appears under that head, and a cross index under names of States giving you the different headings where that particular State is to be found, so that you will have a cross reference index both ways

The first heading is a very general heading, I am not at all sure that it was a wise heading to adopt in the first instance, but it was adopted, or something very like it, and material has come in under that head, and we have kept it The whole of these headings are a little unscientific Do not criticise the logic of the headings too much, Sirs, because I think you will find that they are all a little illogical, but there is a considerable practical value in the headings, and a good deal of commonsense about them, in the long run

The first heading relates to where the Government has behaved in a way that involves a challenge to, and a denial of, the sovereign rights of the Ruler in his own territory. I propose to deal with that heading first. It falls under various sub-headings I will just give you one or two sub-headings to show you the sort of thing which I have in mind There are four sub-headings; the first deals with curtailment of sovereignty by means of sanads, that is to say, the case where a State was originally a full power State, subject only to paramountcy rights and where in the course of time its rights have become obliterated, and it has had its position defined by means of sanads that really curtail the right which it says it originally had

Another type of heading under this A (a) i is of the contention that Government institutions, military officers and men and establishments, and civil officers, are not liable to pay local taxes, customs, duties, tolls, and so on, challenging the fiscal authority of the state within its territory Those are the sort of headings which are covered by this A (a) i.

I take first the question of the curtailment of soverignty by means of sanads, etc., and the best illustration of that is afforded, or a good illustration of that is afforded, by the States of Bihar and Orissa, and of the Central Provinces, and in order to deal with the case on general lines instead of taking a large number of individual States separately, every one of which will be putting forward to a large extent a similar case, we have taken the Bihar and Orissa States as a whole, and the Central Provinces States as a whole, and we have only included certain States of the Bihar and Orissa group which we think throw additional light on the question

Therefore I propose to take them in this order Perhaps you would not mind noting down the pages for convenience—the Bihar and Orissa group first—(page 14), followed by Seraikela (page 244), Mayurbhanj (page 65), Dhenkanal (page 95), Baud (page 1), Central Provinces (page 23) That is the order in which I am going to take them

The Bihar and Orrisa States as you remember are put into four groups Parenthetically might I suggest to Colonel Ogilvie that he should have here copies of the little book called "The Indian States" to-morrow, and if he can get it the Bihar and Orissa States Manual Could he get it from the India Office?

Secretary· I do not know whether the India Office have got it I have not a copy

Sir Leslie Scott: I have one or two typed copies, one I can lend to the Committee if necessary

Secretary I will try and get a typed copy of the Bihar and Orissa Manual from the India Office

Sir Leslie Scott Thank you, and could the Committee also have available a complete set of Aitchison so that we can refer to the treaties if necessary?

Secretary Yes, that I can easily manage

Sir Leslie Scott You will find the general arrangement of all these cases—I call them "Cases" for want of a better word—is a memorandum or explanatory note followed by exhibits With the individual States our endeavour has been, wherever there has been a statement of fact, to attach the contemporaneous letter or document which shows it

You will find (on pages 14 and 15) a statement of the grouping of the States There are three main points. The first one is a point common to a very great many cases it is that originally the State was a full-powered State and that in course of time its full-powered rights have been lost sight of and gradually the Government has come to regard the State as one which was subject to a very large measure of Government control over its internal administration That is very often due to a report having been made upon the position of the State at some comparatively early stage by some officer who has not known

the true position and whose report gets on to the records of the Department and is regarded subsequently as authoritative. It is obvious that any official of the Department at any particular date on turning up the records and finding a definite report as to the position of a State and its powers, assumes that that report is correct, assumes that it has been made after due enquiry and is therefore authoritative. Once you get a record of that kind, originally erroneous, I think you will agree with me that there is grave risk of the case not being re-investigated to an extent which will displace that record That is a phenomenon, perfectly natural, which in our belief has happened to a great extent. That is common to the Bihar and Orissa States and many others

The second main point is that quite early there was a misconception, at the very outset or very soon after the outset, as to what the Bihar and Orissa States were They were spoken of as "zemindaris" or "kilas" The word "zemindar," as you know, is a word which had a very loose connotation at one time Several full-powered States of to-day, as, for instance, Benares, are States in which at one time the Ruler was spoken of as a "zemindar." These States are in some of the early documents referred to as such. But that it was wrong is proved by the treaties that were made direct with them in 1803. You will remember that after the victory over Tippoo Sahib in 1799 in the south and the institution of the new State of Mysore, when Mysore was given just such powers as Wellesley thought wise, putting it really under the permanent control of the British administration, the British moved northwards and westwards up the west coast and also northwards and eastwards up the east coast, and you remember that in the Autumn of 1803 the Mahrattas were beaten and the treaty of Deogam was signed on the 17th December, 1803 Before that was signed, the treaties were made with the Bihar and Orissa States, they helping the British These treaties were made with them as independent States—they are in Aitchison—and as sovereign Rulers There is no doubt in my submission that that was their position then, and if they were called zemindars, it was an inaccurate use of a word, or use of a loose word which had a double meaning

The third point is an interesting one; it bears directly on the first point These States, both Bihar and Orissa and the Central Provinces, were moved about from one provincial administration to another, re-grouped as groups, taken from one administration and put into another. That went on all through the 19th century. There were frequent changes The result of taking a group of States from one administration to another is that the new administration has not the same knowledge of the new-comers as the old one had, and tends to put them as a class in with another group. That happened very much as regards these Bihar and Orissa States; they were moved like shuttlecocks from one Government relationship to another Broadly speaking, our submission as regards those States is this, that they possessed full internal sovereignty before 1803, they had not ceded any of their powers to the Crown between 1803 and to-day; they therefore still possess the whole of those powers *de jure* and the Crown had no right to attempt to curtail their powers by any executive act. As regards all the 26 States of the Bihar and Orissa group we submit that the

Crown succeeded to the rights in regard to them which it obtained either by treaty from them or in certain cases as the successor to the State of Nagpur in 1854 or as the grantee of certain rights by Nagpur at an earlier date in the century. As Sir Harcourt knows well, the country is a mountainous or hilly country; it is a long way away from Nagpur, and Nagpur never exercised any effective control over any of these Bihar and Orissa States. Some of them—most of them—paid tribute, but the payment of tribute means nothing more than a cash payment and does not involve any control over the internal administration It is exactly like the position of the Kathiawar States, which, as you know, all paid tribute to the Peshwa or Gaekwar, and yet to-day how many of them are absolutely full-powered States? Historically and constitutionally I submit that in regard to all these Bihar and Orissa States the system of administration that has been permitted during the last century or so has gradually put them into a position of inferiority involving a denial of their sovereign rights in which they ought not to have been put That is the broad complaint as regards them

Of course, in certain cases, as you know, the Mahratta States did exercise some measure of internal control over States, as, for instance, Gwalior over Rutlam; but in the case of Nagpur and these Bihar and Orissa States, there was no relationship except that for payment of tribute—nothing else.

Now, Sir, if you will kindly look at what there is at page 14, after Group IV · Mayurbhanj, in Group III, and Seraikela and Kharsawan, Group IV, were never over-run by the Mahrattas and paid no tribute to Nagpur. The rest were liable to pay tribute to Nagpur But their case is that although liable—that is originally—to pay tribute to Nagpur, they did not become Feudatories and had no feudal relations with the Mahratta Government of Nagpur Then on page 14, there are the names of the States Group I includes, you see, the three salute States (Kalahandi, Patna and Sonpur) on the left-hand page and the two non-salute States (Bamra and Rairakhol) on the top of page 15, These States, along with some Garjhat States now in the Central Provinces, were ceded by the Government of Nagpur finally to the East India Company in 1826 They were first ceded in 1803 after the Treaty of Deogam but reverted to Nagpur by the Treaty of 1806 They were again transferred to the Company in 1818 during a minority after the deposition of Appa Sahib, but were finally ceded to the East India Company by the Treaty of 1826 (when the minority *of Nagpur came to an end) After the Central Provinces were formed* into an Administration under a Chief Commissioner (in 1861), these States were transferred by Sambalpur to the Central Provinces in 1862 While in the Central Provinces they were granted Adoption Sanads in 1865 In 1867 Sanads were granted to them whereby they were recognised as Chiefs with full jurisdiction except that in criminal matters before a sentence of death can be carried out the confirmation of the local Government is necessary (Aitchison, Vol I, 4th Edition, page 359)

Just pausing for a moment, our submission is that that exception was not justified by any right vested in the Paramount Power, or the

Government of India acting on its behalf. It is interesting to compare the Sanads of 1867 granted to these chiefs, for instance Patna, with the earlier Kabuliats of Patna of 1827, referred to there, in which they were treated as mere Zemindaris There you find a curious illustration of the State getting more recognition after transfer to the Central Provinces than it was given by the word "Zemindaris" at the early stages Just turning across for a moment to page 17, I want to read a passage which you get under Group III, which is equally applicable to all these Bihar and Orissa States; The seventeen tributary Mahals of Orissa (Athgarh, Athmallik, Baramba, Baud, Daspalla, Dhenkanal, Hindol, Keonjhar, Khandpara, Mayurbhanj, Narsinghpur, Nayagarh, Nilgiri, Pal Lahara, Ranpur, Talcher, Tigiria)—that is Group III—first came into touch with the British Government in 1803, when they entered into treaty engagements with the East India Company Their case is that before 1803 they paid tribute to the Mahrattas when compelled to do so, but they were not feudatories in any sense of the Mahratta Government. Reliance is placed by these States on Mr. Sterling's Book, "An Account of Orissa," at page 92, where you have got this passage: "The peasant militia of Orissa, strong in the network of rivers, defied the Mahratta troops and the collection of revenue reduced itself to an armed campaign in which, to say nothing of the expenditure of blood and treasure, the Mahrattas were as often worsted as successful." On page 39 Mr Sterling says: "These Chiefs were *de facto* proprietors of their possessions under the Native Government They held them hereditarily, exercised uncontrolled territorial jurisdiction within their limits, and appropriated entire revenues, subject to the condition of performing military service" Those quotations are equally applicable to all four Groups I should like to cite Aitchison here, and while that is being turned up, further down the page you will see a reference to Mr. Maddox's Report upon the Settlement of Orissa in 1900. He says: "In a newly conquered country, and with the Mahratta power not yet wholly broken, it was clearly politic to conciliate the Chiefs of these mountain regions and their barbaric subjects, and to do so it was most needful to guarantee them that freedom from internal interference that they had ever enjoyed" If you would kindly turn to page 98, you will see one of these treaty engagements with one of these Bihar and Orissa States, namely, Dhenkanal, and you will see on page 99 the date 24th November, 1803 That was three or four weeks before the Treaty of Deogam This was made with one of these States, and similar engagements were made with eleven others—I think with all of them. It is made as a treaty engagement executed by the Rajah of Killa-Dhenkanal, a tributary Mahal, subordinate to Cuttack, to the Honourable East India Company's Special Commissioners "I (the Rajah) engage faithfully and correctly to abide by this engagement entered into by me with the Honourable East India Company as contained in the following clauses" Clause 1 is: "I will always hold myself in submission and loyal obedience to the Honourable East India Company aforesaid" That is equivalent to what you get in the Treaties of 1818, a subordinate co-operation for military purposes Clause 2 is: "I will continue to pay without demur to the said Government as my annual peshkus or tribute" so much Clause 3 is:

"I will, on demand to that effect, cause any person who is an inhabitant of the Soobah," that is a district under the Company's Government, "appertaining to the Honourable Company aforesaid and who may have fled and come into my territory to be forthwith arrested and delivered over to the Government." You will notice the phrase "my territory" Clause 4 is. "Should any person, who is a resident in my territories, commit a crime within the limits of the Mogulbandi"—that is again in the Company's territory—"I hereby engage, on demand to that effect, to cause such person to be arrested and delivered over to the Government authority" There is nothing more in that clause that matters Clause 5 is "I engage that whenever the troops of the Honourable Company's Government shall pass through my territories, I will direct the people of my Killah to supply, to the extent of their capability, all Russud and supplies which shall be sold at fair prices Further, I will, on no manner of pretext whatever, ever stop or detain or offer any let or hindrance to any subject of the Honourable Company's Government, or to any other person whatever, who may be proceeding by land or water, with goods or orders, or with any *parwannah* on the part of Government, through my boundaries," and so on. Then Clause 6 is, "In case any neighbouring Rajah or any person whatever shall offer opposition to the said Government I engage, on demand and without demur, to depute a contingent force of my own troops with the forces of Government for the purpose of coercion and investigation and the bringing of such recusant into subjection to the aforesaid Government" That document in my submission, read in the light of the history of the time, is a Treaty in which the British Government, the Company, were making terms with an independent Sovereign entitled to govern his own territories, and only subject to the payment of tribute I will give you the authorities on the subject of tribute, but I think it is common ground now that the payment of tribute does not of itself involve any right of internal interference All the Kathiawar States, for instance, pay At the foot of the page in Aitchison, volume I, page 416, which deals with the Treaty of Deogam, there is this Article, which is Article 10 in the Treaty "Certain Treaties have been made by the British Government with feudatories of Senah Saheb Soubah These Treaties are to be confirmed" Those are the Treaties which I have just read to you "Lists of persons with whom such Treaties have been made will be given to Senah Saheb Soubah, when this Treaty will be ratified by His Excellency, the Governor General in Council" That is the Treaty with the Maharajah Raghojee Bhoosla and Jeswunt Rao Ramchunder, under the Sovereignty of Nagpur to whom these people were under obligation to pay tribute, and he is made to ratify all those Treaties under which each one of these people transfer their tribute from him to the British Government The note in Aitchison (page 416, Vol I) is "The Rajah manifested the utmost reluctance to ratify this Section, and it was only under the threat of renewing hostilities that he consented to sign the lists" So that you have the position that all these States had Treaties with the British Government under which they undertook to bring their army to the support of the British Government when wanted, and they are treated as

independent Powers. Their Suzerain is made to sign the Treaty of Deogam, ratifying the Treaties which have previously been made with the British Government by each of these people in their own right. In my submission, that is a position in which the British Government was bound henceforward to recognise the sovereignty of each one of these Rulers for internal purposes within their own territories. They accepted the paramountcy of the British Government by that first clause of the Treaty undertaking to be loyal to the British Government, but beyond that they were independent Powers. You will find some reference to the historical position, I think, in the general introduction, and in several of these cases that are contained in the volume you get greater details about it, but that is the gist of the position. If you look on page 16, where I was reading before, the gist of the complaint, you will notice that during the early years of the British connection Patna and Sambalpur States—Sambalpur was one of those States that was confiscated for disloyalty in the Mutiny and is now part of British India—appear to have been treated as mere landlords with delegated powers of criminal jurisdiction. Yet these were the two powerful States in the Sambalpur area who, before the advent of the Mahrattas, claimed suzerainty over their neighbours According to Aitchison—that is volume I, page 389—" the Sambalpur and Patna, or Garhjat, Chiefs were at first independent, but were subsequently held in subordination to the Maharaja of Patna, the most powerful of their number In later times he was compelled to share this supremacy with the Maharaja of Sambalpur. . . . Advantage was taken of the circumstances in which Sambalpur, Patna and their dependencies were found on their cession to annul the dependency of the other zamindars on these two Chiefs" You will notice Aitchison is using the word "zamindar," which, in my submission, is misused in this connection Then the case of these States is that the Sanad of 1867—that is the limiting Sanad which I will refer to in a moment—is in derogation of their sovereignty. That the British Government obtained no more right over them than the Mahrattas, namely, the right of tribute Although their treatment under the administration of the Central Provinces was better than it had been while they were under the Government of Bengal, the Sanad of 1867 does not define their real status as sovereign rulers entitled to the independent administration of their own territories.

In the Manual which I have got here of the Bihar and Orissa States you get a very interesting piece of information You know, Sirs, of course, that that is the Official Manual.

Chairman: Yes.

Sir Leslie Scott: In Chapter I, paragraph 2, appears this passage: "A note written by Mr. H M Kisch, Indian Civil Service, when Under-Secretary in the Political Department, gives a very interesting and useful account of the status of the Tributary Mahals or States of both Orissa and Chota Nagpur. The following extracts are quoted here as being of special interest · 'Apparently when Orissa was ceded to the British Government' (that was in 1803, by the Treaty of Deogam), 'it was open to the East India Company'—note the word 'open'—'to have brought the Tributary Mahals under the ordinary

jurisdiction of the Courts, but they were not so brought.' Instead of this engagements were entered into by all the Chiefs, binding themselves to maintain submission and loyalty to the East India Company's Government, and to pay annual peshkash or tribute." Now, with that origin, a note written by this gentleman on the records of the Department, which says apparently that when Orissa was ceded to the British Government it was open to the East India Company to have brought these States under the ordinary jurisdiction of the Courts of British India, the whole view of Government seems to have followed that line, which must be wrong, in my respectful submission, if you look at that Treaty of 1803 There is no other shred of authority to which the Government can point, except that Treaty and the succession to the Peshwas by the Treaty of Deogam, no other Treaty at all. If the Opinion which we have submitted to you is right, each State must be regarded as having retained all those sovereign powers which it has not ceded Some States were conquered and annexed and ceased to exist I am not concerned with them I am not denying that conquest and annexation is a means of acquiring either territory or sovereign rights, but what we do say is that, assuming the rule to be that the Government observes the Treaties as stated in the Proclamation of Queen Victoria in 1858 and subsequently—assuming that, and that you are only concerned, therefore, with seeing whether a cession has been made by the consent of the State—then if you find that in 1803 the Government, when in difficulties, in the midst of a critical war upon which an immense amount depended at that stage, as you remember, makes treaties with these people in reward for the support they have given, those treaties being confirmed by the Suzerain to whom they had owed the degree of allegiance indicated by the payment of tribute, then I say that unless the Government can produce subsequently some definite agreement signed by that State, or any one of those States, transferring further powers, the Government has no right to arrogate to itself powers which have never been given to it

Now, that is the case, and that is a case which is typical in principle of the general submission by the Standing Committee to you, Sirs. Contrast with that position a passage in a later part of that Manual which is issued as a guide to Political Officers as to the way they are to deal with those States of Bihar and Orissa I am reading paragraph 13 "In maintaining in this way the dignity of the Chief, the principle must be recognised that the Chief's dignity and privileges depend on his just, impartial and right administration of his State" Well, that, of course, is an erroneous proposition in that form If he is found to be oppressive or unjust or to break any of the conditions of his Sanad, or to disregard the advice of the Commissioner, his powers must be suspended or withdrawn either wholly or in part Now my submission is that that is an entirely unwarrantable claim on the part of the Government, that it had no power at all to take up that attitude or to instruct its Officers that they could treat these States in that way

That is the broad issue of these Bihar and Orissa States I will give you certain references to the Manual to-morrow, when we get it. I will not pause now, it is very inconvenient to quote from a document

which is not before the Committee at the same time, but I wanted to give you those two quotations. You see an illustration there of what I suggest to you is very common, of a report on the records of the Department acquiring authority, so to speak, subsequently through the Department not realising that it was erroneous. Now, broadly speaking, that is the position.

Would you look for a moment at the Sanads that were subsequently given (pages 23 to 26)? Page 23: that was the Sanad given by Lord Elgin, I think it was in 1894*. "Whereas the status and position with reference to the British Government of the Tributary Mahal of Talcher in Orissa has hitherto been undefined and doubts have from time to time arisen with regard thereto, His Excellency the Viceroy and Governor-General in Council is pleased to grant to you (the Raja) the following Sanad, with a view to assuring you that the British Government will continue, as long as you remain loyal to the Crown and abide by the conditions of the Sanad, and of your other Engagements, with the British Government, to maintain you in the position and privileges which you have heretofore enjoyed or which are now conferred upon you."

Now, you observe there the statement in the preamble that the status and position of the State of Talcher—one of these States, they are all alike—has hitherto been undefined and doubts have from time to time arisen with regard thereto. It was not undefined in 1803, it was perfectly clear then, and the doubts have only arisen simply because the Government have not recognised the position of the State "You . . . . are hereby formally recognised as the Feudatory Chief of the Talcher State, and you are permitted, as heretofore, to generally administer the territory of the said Talcher State, subject to the conditions hereinafter prescribed" My submission is that there was no right to prescribe any conditions—none at all. II You shall continue to pay the tribute . . . . " Now, notice III "You shall try in your Courts all criminal cases occurring in your territory except (1) those in which Europeans are concerned, and (2) heinous offences, such as murder, homicide, dakoiti, robbery and torture. You shall refer the cases excepted above for disposal to the Superintendent of the Tributary Mahals"—that is equivalent to the Resident—"or to such of his assistants as he may indicate. Sentences passed by you on criminal offenders shall be regulated by the instructions issued from time to time for your guidance by His Honour the Lieutenant-Governor of Bengal, and shall not exceed (unless His Honour is pleased to entrust you with more extensive powers, in which case you shall be entitled to exercise such further powers in the manner, to the extent, and subject to the conditions, if any, which His Honour may prescribe) in the case of imprisonment, a term of two years, in the case of fines, a sum of One Thousand Rupees, and in the case of whipping, thirty stripes All orders passed by you in criminal cases shall be subject to revision by the Superintendent, to whom you shall send the records of any case for which he may call."

My submission is that there is not a single word in that paragraph which the Government was entitled to impose, not even the veto on the

* Sanad granted to the Chief of Talcher defining his status, powers and position with reference to the British Government—1894 (Aitchison, Vol I, page 335).

trial of Europeans. Of course, as you appreciate, my submission is that the ultimate criterion on all these questions is the legal criterion, that is a view which I submit throughout the whole of these cases If there is any doubt about that, of course that is a matter which would ultimately have to be tested, but assuming the information to be correct then it follows, in my respectful submission, necessarily that the Government was committing a breach of its obligations to this State and trespassing upon the sovereignty of the State when it had no right to, by telling the State that it should not be allowed to exercise certain sovereign judicial powers.

IV again is open to criticism, that is a question of extradition "You shall deliver up any offender from British or other territory, who may take refuge in your State. You shall aid British Officers who may pursue criminals into your territory, and in the event of offenders from your own State taking refuge in British or other territory, you shall make a representation on the matter to the authorities concerned" Where an offender from the British jurisdiction is found in a State the British authorities demand that he shall be handed over without producing any *prima facie* case before any Judicial Authority in the State, whereas *vice versa* there is no reciprocity.

V. There is no objection to V, except that the Government has no right to dictate at all The same remark applies to VI A perfectly sound principle, but it is merely advice from the Viceroy It is sound advice, of course

Chairman Are you going to produce evidence of the State objecting to receive the sanad?

Sir Leslie Scott. In regard to the group of States themselves that is their case, that they protest that this was an infringement of their sovereignty.

Chairman: At that time?

Sir Leslie Scott: If your question means did they by not objecting give the implied consent to having their soverign powers curtailed then of course that is a separate question which I appreciate might be raised in certain cases, and it is a subject with which I am going to deal rather carefully.

Chairman I did not mean to raise that question I merely wanted to ask, as a matter of fact, whether when the sanads were presented they were objected to at the time

Sir Leslie Scott: In some cases they were, Sir, and in other cases they were not There were actual Memorials from some States of protest, of which you have got the evidence here, but as you have put the question to me, Sir, your question raises a very general point.

Isolation, which has been rigorously imposed upon every State up till quite recent years, has had the effect of putting the individual State in, I think, almost the majority of cases, in a position in which it has been almost afraid to protest The position of the State has been one of infinite weakness, compared with the infinite strength of the Government, and I respectfully submit that you cannot draw the inference of consent from circumstances in which the States have acted without any freedom of will Very often in ignorance of what their real rights were, merely a feeling that their rights were being tres-

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passed upon, but an attitude partly of fear, partly of ignorance, partly of inability to realise what was being done, very often in the first instance they have abstained from taking any action.

Chairman: That is your point of view?

Sir Leslie Scott: Of course, in many cases there has been actual pressure, of which you will find evidence here The further answer is that the omission to protest, in my submission, does not take away from the State any sovereign powers—the omission to protest. Nothing will take them away except actual consent, and in my submission you cannot infer consent in the particular sort of circumstances to which you refer.

Chairman: It was a question of fact; I only asked on the question of fact.

Sir Leslie Scott. A particular case arises sometimes where these curtailments of powers, even by sanad, have sometimes taken place during a minority administration, and in that case, in my submission, there can be no question about it. It is beyond discussion. The Government is in the position of trustee, the State is not in a position to give consent It is under the control of the Government. The Government, acting as trustee, cannot consent to give away the State's rights

Professor Holdsworth Would you say that all sanads got under those circumstances are wholly inoperative?

Sir Leslie Scott Your question was "got under those circumstances"?

Professor Holdsworth Yes, you are describing various circumstances now, where sanads have been obtained under pressure during a minority

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Sir Leslie Scott Yes, certainly, wholly ineffective That is covered by a general sentence in paragraph 5 (*c*) of the Opinion

Colonel Peel Your argument is that a bilateral agreement only is effective

Sir Leslie Scott Either a bilateral agreement or a unilateral consent by the grantor State. The best analogy to take from ordinary life is a grant of any property Take the analogy of a grant of property, real property, a piece of land What is necessary to convey that land from one owner "A" to another owner "B" is a grant executed by "A." It may be a contract signed by both with the consideration on the one side and the grant of the land on the other or it may be a unilateral deed, a deed of grant by the owner of the land *Nothing but the consent of the person entitled to the rights* can take those rights away and sovereignty is not different in that aspect from any other form of right known to the law.

Colonel Peel: If your view were correct your edition of Aitchison would be a very thin volume.

Sir Leslie Scott: There would be a good many footnotes to the effect that this is past history. You are pleased to put it in a jocular form, but our submission is that there has been widespread misapprehension of the legal position. I do not know whether you, Sirs, have copies of the Opinion by any chance to-day?

Secretary: Yes

Sir Leslie Scott: Would you mind looking for a moment at paragraph 5 (*c*) under "Sanads": "But whatever be the correct signification of the word, we realise that in political parlance it is used generally as indicating a grant, or recognition from the Crown to the Ruler of a State.

"But a Sanad by way of grant can have no operative effect, as a grant, if the grantee already has the powers which the Sanad purports to grant. It could only have that effect, if the grantee State had, at some previous date in its history, ceded to the Crown those very powers which, or some of which, the Sanad purports to grant; or if it were a case of a re-creation out of British India of a lapsed State, or a cession to an existing Ruler, of territory which at the date of the *Sanad was a part of British India.*

"Similar considerations apply to a Sanad by way of recognition If the State does not possess the right, the recognition would be construed as a grant, but if it does possess the right, then the Sanad is a mere acknowledgment, or admission by the Crown

"It follows also from the reasoning of this opinion, that the machinery of a Sanad cannot be used so as to curtail the powers of a Ruler."

I need not read further. The thing to realise, I venture to submit, is that a Sanad purports to be something given by the Crown If the State to which the Sanad is issued is already in existence as a full power State the Crown has got nothing to give, it cannot issue a Sanad, the form of a Sanad to cut down the rights It cannot profess to be giving nor in reality to try and take away That is the point Certain Sanads have been valid because at the time when they were given the person to whom they were given had no rights They are perfectly valid but the Sanad that is talked about in that paragraph in the Opinion, the kind of Sanad that there is in relation to Bihar and Orissa was a document which purported to be a grant from the Crown conferring powers, used not in order to confer powers but under the pretext of defining the position, a false pretext in order to take them away I am not suggesting by "false" that the Government at the time knew that they were not entitled to do it I express no opinion upon that, it is irrelevant to my argument The argument is the same whether they knew it or whether they did not know it. If that State was a State entitled to certain powers, it did not need a grant from the Government to have those powers, and a grant from the Government could not put in conditions by which those powers could be reduced That is the broad legal position, and I say quite *frankly that that does seem to me, to the Standing Committee of the* Chamber and the Princes generally, to be an important point upon which the Government have not understood their own position, a fundamental legal point that goes to the root of the whole matter. As Colonel Peel pointed out, it affects Aitchison very much, because it means that many documents which appear in Aitchison and are there quoted as having a certain effect, do not have that effect.

Colonel Peel You must not quote me as giving that view; I am only saying *your* edition of Aitchison

Sir Leslie Scott Aitchison is primarily a book of history, and as such the only contribution which I trust may result ultimately from the present enquiry will be some addition to its pages in order to bring

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Sir Leslie Scott: There would be a good many footnotes to the effect that this is past history. You are pleased to put it in a jocular form, but our submission is that there has been widespread misapprehension of the legal position I do not know whether you, Sirs, have copies of the Opinion by any chance to-day?

Secretary: Yes.

Article VIII is another, I submit, wholly unwarrantable article · " You shall consult the Superintendent of the Tribuntary Mahals——." I remind the members of the Committee who are not familiar with this, that the Superintendent of the Tributary Mahals was the officer of the Political Department appointed like the A.G G to deal with all these States. " You shall consult the Superintendent of the Tributary Mahals in all important matters of administration, and comply with his wishes" What sovereignty is left to the State now On all important matters you take your orders from the Superintendent of Tributary Mahals, an officer of the British Government? " The settlement and collection of the Land Revenue, imposition of taxes"—look at the category here—" the administration of justice, arrangements connected with excise, salt and opium, the concession of mining, forest and other rights, disputes arising out of any such concession, and disputes in which other States are concerned, shall be regarded as specially important matters, and in respect to them you shall at all times conform to such advice as the Superintendent of the Tributary Mahals may give you." Leaving out the question of disputes with other States, which falls under other considerations, my submission is that there was no right to impose any single one of those conditions As regards the position as to disputes with other States, you may perhaps remember in the Opinion we expressed the view that it is an implied term of the agreement of paramountcy that the paramount power will provide the means for the adjustment of disputes between States, that is a corollary of giving up foreign relations, but, apart from that, the whole of this is unjustifiable

Then Article IX. " The right to catch elephants in your State is granted to you . " What business had the Crown to grant that? It was not the Crown's to grant, it was the inalienable right of the State I pass to the next one*, look at the first two lines of the next one That is 14 years later *Ex hypothesi* the rights have been defined by the last one on this erroneous hypothesis which I admit for the purposes of argument " Whereas the status and position with reference to the British Government of the Feudatory State of Talcher in Orissa require to be freshly defined——" The second is like the article in the last The long one, Article III, has become compressed " You shall conform in all matters concerning the preservation of law and order and the administration of justice generally, within the limits of your State, to the instructions issued from time to time for your guidance by His Honour the Lieutenant Governor of Bengal " We must assume for the purpose of testing the point that Government thought that Clause III in this sanad meant something different from Clause III in the previous sanad Clause III of this sanad is absolutely unlimited in its power of control What right had the Government to do that? Then VIII is the same as the last VIII, except that the elephants had been caught and now had not got an article to themselves but come in incidentally in the middle of Article VIII

Now I pass to the last sanad, 1915 † Note the charming beginning. " Whereas the status and position with reference to British Govern-

* Sanad granted to the Chief of Talcher—12th Oct., 1908
† Sanad granted to the Chief of Talcher—15th May, 1915.

ment of the Feudatory State of Talcher in Orissa require to be freshly defined "

Chairman: I take it your argument applies to all three the same?

Sir Leslie Scott: Exactly.

Chairman: What applies to one applies to the others.

Sir Leslie Scott: Precisely; I do not think there is any substantial difference that I can see between the 1915 one and the 1908 one

Chairman: I think you will find that on a fresh succession to the State a fresh sanad was granted. That was the usual practice I believe

Sir Leslie Scott: In some cases that was so, Sir. Take, for instance, the one of 1894 and the one of 1908 that I have just read to you.

Chairman. However, the point is immaterial.

Sir Leslie Scott: I was only just going to call your attention to this, that they are both addressed to the same man. Your suggestion is one of great importance Assuming that some of them were, and if I may respectfully say so, your recollection is right that in certain cases that was so, does succession give the Crown any right to remould the sovereign rights of the State? We submit not. We submit indeed that the succession gives the Crown no rights of any kind whatever; that the succession takes place by the law and recognition of the State automatically, and that the Crown has no right to refuse to recognise the succession any more than the Crown has a right to refuse to recognise the succession to the Kingdom of Spain or Italy on a succession taking place It is a matter of diplomatic courtesy to give the recognition *Voila tout!* That is all.

Will you now look at some of the circumstances which led to the grant of these sanads I say "grant," but the word is obviously misused in this context Will you look at page 18, about two inches down the page under the title: "First Suggestion of a Sanad" A Judicial Officer, Mr A S Staley, was specially asked to report on the powers of the Rajahs He reported in 1889 and proposed inter alia (1) Limited criminal jurisdiction, (2) Grant of Sanads defining the limitation of their powers, (3) Residuary jurisdiction in judicial and administrative matters to be vested in the Superintendent and other British Authorities. At a later stage I will have occasion to deal with that word "residuary" My submission is that all jurisdiction rests in the Ruler except what he has specifically given up, and that, as applied to British powers, it is an entire misuse of the word He (Mr Staley) recognised that under "treaties" it is plain —this is historic, and has reference to the history of these Treaties of 1803—that there was no limit on the power of the Chiefs in the administration of civil and criminal justice. He actually recognises what I have submitted to you here to-day, that under these Treaties of 1803 there was no limit—they were fully-powered States The sentence is limited to judicial sovereign powers, it is not dealing with anything else. But you have this gentleman, Mr. Staley, a Judicial Officer, putting that upon record, and upon that proposing to limit their criminal jurisdiction. He says: They have got the powers. Let us take them away—that is what he means; and the Government did it. He feared that the Rajahs might oppose the grant of Sanads restricting their power. He observes as follows: "It has been due

to the meagreness of the terms of the first Sanads"—meaning the Treaties of 1803* (which, of course, were not Sanads—"that the authority of the Rajas has been continuously encroached on." The Judicial Officer is just stating what I have said to you before: "Is it likely that the Rajas will accept a body of strict rules instead of the vague terms of their old Sunnuds, or that they will look upon the bare acknowledgment of semi-sovereignty as sufficient compensation? In a note of Colonel Ridgeway of 1883 forwarded to us demi-officially by the Under-Secretary of the Government of India, Mr. Cunningham, the precedent of grant of fresh Sunnud to the Rajah of Patiala of the Phoolkian family is invited. But in that case"—that is the Sunnud of 1860, no doubt—"full powers of sovereignty were granted, including powers of life and death, as a reward for good services" You will remember a considerable area of additional territory was conferred by that Sunnud with full powers; and that is the reason you get the provision in "In that case the fresh Sunnud conferred fresh honour, and was no doubt welcomed Here the case is quite different The Sunnud to be now conferred would limit the power left to the Rajas by the first Sunnud granted to them The Rajas are certainly aware of the decision in the case of Mayurbhanj" That is quoted on the eighth line at the top of page 18 That is a case which decided that those in the Government who thought that Mayurbhanj was British territory were wrong You remember the case. "They must also be well aware that their authority has been encroached upon by the Executive Authorities. From the date of cession in 1803 to the Rules of 1839"—it is about Criminal Jurisdiction—"the Chiefs had full judicial powers, criminal powers, as well as civil, within their States, and it was never denied that they held powers of life or death. On the introduction of the Rules of 1839, their jurisdiction was reduced till, according to the Report on Cuttack, of Mr Ricketts of 1858, they were left without any authority whatever The position of the Rajas is more dignified now, but it is plain that the degree of interference varies with the views of successive Superintendents, and that a Rajah is still liable to 'have the orders which he may pass' in a particular case 'dictated to him'" I venture to submit that short paragraph is conclusive proof that the Government was not entitled to do what that gentleman recommended them to do, and which they did I want to go a little further. Government wrote to the Superintendent on the 21st June, 1816,†—this is another point—enunciating its policy towards the Rajahs "The office of Superintendent was constituted expressly to supply in a certain degree the want of more regular establishments It is not the object of Government to weaken the influence of the tributary Mahals over their peasantry and still less to interfere in the details or usages of the country." That is the attitude of the Government in 1816 Sir Harcourt Butler will probably remember the case that went to the Privy Council in 1905 about British jurisdiction in Kathiawar You will remember that in that case similar views were expressed there The position is that the Government in offering advice and helping

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* Aitchison, Vol I, page 314

† Appendix to Minute on Tributary Mahals by Moffat Mills, published in the Selections from the Records of the Bengal Government, 1851, No III

to exercise jurisdiction in the States, is exercising the jurisdiction of the Ruler (that is, it is by his consent, and to the extent of his consent), on his behalf; I shall have occasion to deal with that aspect of the matter at a later stage At the top of page 19 it goes on: In 1821, the Superintendent, Mr. Blunt, submitted rules to Government to prevent perpetration of grave crimes with impunity by the Rajas and for the trial of persons accused of such crimes Government once more enunciated its considered policy in a letter to the Superintendent dated 10th August, 1821*: "Interference should be chiefly confined to matters of a political nature, to the suppression of feuds and animosities prevailing between the Rajas and the adjoining Mahals or between the members of their families or between the Rajas and their subordinate feudatories, to the correction of systematic oppression, violence and cruelty practised by any of the Rajas or by their officers towards the inhabitants, to the cognizance of any apparent grave violation by them of their duties of allegiance and subordination, and generally to improve points which, if not attended to, might tend to violent and general outrage and confusion or to contempt of the paramount authority of the British Government" There you have the principles which all the Princes to-day accept

Colonel Peel· They are contrary to your contention, are not they?

Sir Leslie Scott No, not in the least—not in any way I expressed it perfectly clearly that we regard it as implied in the agreement of paramountcy under which the Paramount Power undertakes to protect the State, not only externally but against internal danger, that there must be implied a promise by the Ruler of the State that he will do nothing by way of grave misgovernment to endanger internal security. That is all that is referred to here

Colonel Peel It is something additional to the text of the Treaties

Sir Leslie Scott Certainly I do not know whether you have read the Opinion which we have sent.

Colonel Peel I have, but I only wanted to make it clear in my own mind that there was something additional

Sir Leslie Scott: Certainly That is an implied term which you get. There are many Treaties which obviously imply it It is in the Treaty as an implication. Take all these 1818 Treaties, for instance.

Colonel Peel I understand you to say before if there was not anything in the written document, then it was not to be understood

Sir Leslie Scott· No; I did not mean to say that at all. If I said anything which led you to think that that was my argument, I apologise, because I did not intend to say so Let me say in a sentence what my submission is on that You must ascertain by the ordinary principle by which you ascertain the meaning of an agreement what its terms are Those are the terms which define the measure of cession of sovereign powers from the State to the Crown, and the obligations on each side. In every written agreement you always find certain terms which are implied in that written agreement as a necessary understanding of its terms: such as, for instance, the ordinary principle that each party to a contract impliedly undertakes to do nothing to prevent the other party from being able to perform his duty under the contract. That is the broad principle underlying the right of the

* Selections from Bengal Government Records, 1851, No. III.

Government to intervene if the State as a party to the contract behaves in such a way as to impose upon the Government the necessity of intervening with military force and expenditure in order to restore peace after it has been broken. You could not possibly work the agreement between the two sides—between the States and the Paramount Power—unless that term is treated as implied in the arrangement between them. In that way you get certain terms, very limited in extent though it may be, of great importance, which you read into the agreement between the two parties, and they are over and above the actual express language of the individual Treaties. But, if you remember, we have said in our Opinion that the Paramountcy Agreement, which, in our view, consists of certain simple elementary promises on each side, is an agreement to which all the States of India have to-day become party, and that necessarily implies that that agreement is one which exists. It may have to be implied from the individual Treaties It may be implied from conduct, as in the case of the Kathiawar States, where there are no Treaties at all But our view was that the essence of the position is such that you are bound to arrive at the conclusion that all the States have consented to that position, and that is the attitude taken by the Standing Committee for whom I am appearing before you. Does that assist in answering the point that was in your mind, Colonel Peel?

Colonel Peel I see in it considerable modification of the view you were putting forward just now

Sir Leslie Scott: It is not intended to be so

Colonel Peel: Then it contains more than I thought

Sir Leslie Scott It is no modification Just so that I might help you to clear up the point, I wonder if you would be so good as to tell me the principal thing that you had in mind which I said just now which struck you as inconsistent with that

Colonel Peel. It was only the general statement that the Princes of India agreed to exercise certain powers over and above what was in the treaties—powers with regard to misgovernment and so on

Sir Leslie Scott. If you will allow me, I will see the print in the morning and look closely at what you have said, and deal with it to-morrow, if I may. I want to make quite sure that I have followed the point in your mind The same point that appears in that paragraph near the top of page 19, appears in the penultimate paragraph on that page Upon the Report of Sir Henry Ricketts, Government passed a Resolution, dated 8th December, 1853, pointing out that it was "the duty of the Superintendent to uphold the authority of the Rajas, and to protect the people against gross systematic misrule," and that "the guiding principle of non-interference, a principle hereto steadily maintained by the Government, should be carefully adhered to and not departed from in any instance without special sanction" You see the words "gross systematic misrule" there I think, Sir Harcourt Butler will bear me out that the phrase habitually used by the Viceroy in dealing with cases which, in his view, justify his intervention and even the deposition of a Ruler are cases of "gross misgovernment or flagrant injustice"—I think those are the words used. The significance of that expression in my submission is this—that it is the point of degree where internal security becomes endangered, and

I should like you, Sirs, in looking at this evidence to have in mind that point, that time after time in authoritative pronouncements you find an indication that that is the underlying justification for interference, it is that security is endangered; it is only where security is endangered that the Viceroy has a right to interfere, and that applies even in States such as those of Rajputana, for instance, where there is an absolutely express clause saying that there shall be no interference and that the sovereignty of the Maharaja is absolute within his own territories. It is because if he does anything to endanger security and bring into operation the Paramount Power's undertaking to come and restore order, he is doing something which means to him a breach of his own contract and it is because he is breaking his own contract and imposing a burden upon the other contracting party which he has no right to impose that the other contracting party has a right to intervene That is the legal basis of it and that we accept to the full.

Then you find a change of policy between that date, 1853, that Resolution of Government, and what led up to the Sanads You find here in 1880 the Superintendent forwarded to the Rajas a set of Rules framed by Government regarding the catching of elephants in which Government declared that "the right to catch elephants . . . is reserved to Government and in future no one will be permitted to catch any elephants without a licence from the Superintendent." It is almost as if they were suddenly becoming Royal Swans.

Colonel Peel Is not that a perfectly natural thing, about elephants? I presume elephants roam about from one State to another, and this is an inter State affair

Sir Leslie Scott If that were so, that would at once make me say there is nothing in it. If that be the basis—I will make inquiry as to whether it is so—I quite agree that would make a totally new factor, a new consideration I thought it was that elephants were very valuable and that the States regarded them as like gold mines.

Colonel Peel· There are some sporting authorities here who could perhaps tell us!

Chairman· Well, I do not think the questions we are deciding will turn on elephants, so you need not go further with that point

Sir Leslie Scott. If you please Now, that is the general case of the Bihar and Orissa States. I have not paused to go into the details of the way in which the groups were shifted about from one administration to another because the point seems to me to be one that has its meaning without going into details

The next case I said I would take was Seraikella (page 244). As you remember, Seraikella and Kharsawan are the two States in Group IV of the Bihar and Orissa States, separated from the others, away up to the north by themselves, still further away from the Mahratta power, the Nagpur State This State is a very good illustration because, although there is not a Treaty in 1803, as there is in the other case, there are letters from Lord Wellesley at the time recognising the independence of the State, so that it is just the same position; you start from that. This is a State to which Sanads were issued I am afraid some little knowledge of the history of the State is important. May I at once say that it has been impossible, collecting the cases as we have, to avoid some repetition between the cases sent in by the

different States, and I am going to try and skip so as to save trouble, but I want you to get the history of this State because it is really important. The State of Seraikella was founded in about 1620 by the 1st Bikram Singh, a younger son of the Raja of Porahat—Porahat, as you remember—I do not know whether Colonel Ogilvie has his maps here or not——

Secretary: I am afraid I have not.

Sir Leslie Scott: Porahat is next door to Seraikella and Kharsawan—who granted a tract of country known as the Singhbhum Pir to Bikram Singh. The latter established his headquarters at Seraikella, and soon extended his territory by conquering those of surrounding rulers, including Kharsawan. After conquering Kharsawan he settled it upon the younger son of the Seraikella family from whom the present Chiefs of Kharsawan are descended Kharsawan continued to be subordinate to Seraikella until 1825, when its independence was insisted upon by the British Power as hereafter stated That is one point made by Seraikella, the taking away from it of its powers over Kharsawan. Porahat, as you probably remember, became British territory by confiscation at some stage—either escheat or confiscation, I forget which; it was for some reason Neither Porahat, Seraikella nor Kharsawan had ever come under the supremacy of the Moghuls or the Mahrattas, or had ever paid any tribute—wholly independent As early as December 1767 George Vansittart, Resident of Midnapore, wrote* to Verelst, Governor General, stating, *inter alia*, that Singhbhum (which included Seraikella) "was never reduced under the dominion of the Moghuls, but has for 52 generations been an independent district. Further inquiries revealed that the jurisdiction of the Mahrattas had never extended to Singhbhum, nor did they receive the smallest revenue from it" You find there the authority is given for that statement—Aitchison's Treaties and the Bengal District Gazetteer It has been alleged that in 1793 Seraikella was induced to enter into some sort of engagement giving an undertaking not to give shelter to fugitive rebels from British territory The quotation is given † No trace of any such arrangement or undertaking has been found either in the records of Seraikella nor so far as is known in those of the British Government The assertion cannot therefore be treated as having any foundation In 1803 Orissa was conquered by the British from the Mahratta Maharaja Raghuji Bhonsle of Nagpur, who was the Chief of the Mahrattas The latter, after his defeat, formally ceded to the British certain Orissa States which used to pay him tribute Seraikella and Kharsawan were not included in the territories the suzerainty of which the Bhonsle ceded That is by the Treaty of Deogam What the British got was the right of tribute which the Bhonsle had previously enjoyed There is no dispute about that Will you turn straight to the documents? Exhibits "A" and "B" I will read‡ "B" first "Disagreement having arisen between the English

* *Vide* Aitchison, Vol I, page 367, and Bengal District Gazetteer, Vol. XX, page 31

† Hunter's Statistical Account of Bengal, Vol XVII page 138, and Bengal [illegible]

‡ H Ernest, District Magistrate Seraikella, forwarding a letter

Company, Bahadur and Srijut Maharaja Raghuji Bhonsla Bahadur, war has taken place. The English Army has assembled for occupying the Province of Cuttack of the said Maharaja. Remain very careful. If the English find it necessary that the English Army should pass through your territory or occupy your territory then the remission of your peshkush will continue as at present. The Governor-General, knowing you a very generous and faithful friend, has written this parwana for your assurance, which is being sent to you for your information. The whole country is aware of the value of the word and the assurance given by the Company Bahadur. They never resile from the word of assurance given. Therefore you getting assurance in every way should entertain no suspicion on any account. If a little friendship is shown to the Company Bahadur at the time of need, it will do you good for ever. It is therefore proper for you that you should take suitable steps that the Mahrattas may not pass through the boundaries of your territory and stop supplies to them. If you fail to do it alone then you will write, and assistance will be sent to you immediately from here. By this the Governor-General will be greatly pleased and kind to you and the said Nawab Sahib will be pleased to see that you be maintained in your zemindary as before."

You notice there the use of the word "zemindary" although it was an independent Kingdom and they were treating it is that. Now you get the Governor-General's own letter—Exhibit *"A": "Whereas in these days owing to the attitude adopted and the treatment accorded by Maharaja Raghuji Bhonsla Bahadur, the friendly relations and cordial feelings between the English Government and the Government of the said Maharaja have ceased, it has therefore become necessary and obligatory upon authorities to take up arms to guard the legitimate right and interest of the Government Such being the case, the Government of the English Company have collected troops in Cuttack with a view to interference But your Highness is strongly assured that the authorities have not the least intention and desire to march the English force through your Highness' country or to demand any present or tribute The object of writing this friendly letter is to make a prayer to your Highness to the effect that your Highness will be gracious enough to take measures to prevent the gang of robbers and the band of adversaries from passing into the country of the English Company, through your Highness' country. The fact of your Highness' desire to maintain friendly relations with this Government is more clear than the sun and, in view of the wisdom and sagacity of your Highness, it is firmly believed that your Highness by expressing friendly feelings in the manner aforesaid will give great pleasure to me." You notice that "Your Highness is strongly assured that the authorities have not the least intention and desire to march the English force through Your Highness' country or to demand any present or tribute." I read that letter as showing that at this time, which was critical to the English power when they were just going to fight the Mahrattas, engaged in fighting them, you have the Governor General asking for help from an independent Sovereign in these terms, and my submission is that that is a recognition of the independence of the State at that

* Letter dated 22nd September, 1803, from Lord Wellesley to the Ruler of Seraikella

time. Then (page 244) the Chief wrote to the District Magistrate agreeing to his proposal, and received a reply* in which the Magistrate stated: "Take assurance that should your country come under the Company's Government, His Excellency the Governor-General will not demand any revenue from you. You will hold it free of revenue as you now do." These letters are extracted extensively because Seraikella claims that they indicate the complete independence of his State at the beginning of his relationship with the British powers, that they constitute the basis of such relationship, that they are documents in the nature of a treaty of friendship between independent Sovereignties, and that they contain specific pledges and obligations of a solemn character, not the least of which are those continuously to maintain the status and rights of Seraikella as existing at that time

Now that is the position which we submit, the legal position, it is the equivalent of a Treaty Then we go on, I take these from the memorandum, instead of looking in detail at the letters By a letter of April, 1807, you find there is a present being sent, a greeting to the Sovereign of the State. In 1808 the then Lord Minto wrote a passage which I want to quote (page 252) The second paragraph "Makund Dutt Singh, one of the relatives of the Zamindar of Pargana Patkum and Dukhni Rai, one of the Jagirdars of Towar in the said district have become the root of great disturbances and mischief and by collecting a large number of well armed men have become refractory, and have openly revolted against Government As the places where the said insurgents have committed disturbance, rowdyism and plunder, are close to the country of you, O Noble One, therefore there is every likelihood of the said insurgents crossing the limits of Your Highness's country, and taking shelter there. The object of my writing this friendly letter is to make a prayer to the effect that you, The Illustrious One, will be graciously pleased to make every effort to prevent the insurgents and their comrades from entering Your Highness's country." At the top of the next page, "with a view to make it clear to Your Highness, it is stated that it is firmly believed that the expression of the cordial feelings on the part of Your Highness towards the Government is more clear than the sun All friendly acts on the part of Your Highness on the lines stated above will add to the pleasure of my heart. What more shall I write?" That was to Seraikella from the Governor-General, in language that is probably more familiar to you, Sir, than to me In 1810, Captain Roughsedge, the Political Agent, requested Seraikella as "Malik" of Kharsawan to guard his own territory and that of Kharsawan thereby recognising his own independence and the over-lordship of Seraikella over Kharsawan In 1818 a Government Order—I have not got this Government Order, the Government must have it—announced that Porahat, Seraikella, and Kharsawan, were proprietors of their States, and that they should continue to exercise their existing powers

In a letter of the 29th August, 1818—that same year—from the then Chief Secretary, to Major Roughsedge, Political Agent of the then South-Western Frontier Agency, which became the Chota Nagpur Agency afterwards, states "The Governor-General in Council perceives no objections to recognising and confirming the Chiefs of Seraikella and Kharsawan in their actual possession and authority, and the Raja

* Letter dated 11th October, 1803

of Porahat in those which he has been able to retain. There is no obligation to investigate the origin, or question the validity of the title by which the two former Chiefs hold their present power, nor can it *be necessary to undertake to re-establish the authority of* Porahat." He added that these Chiefs should be left "In the secure enjoyment of their actual possessions." On the 23rd January, 1819, Major Roughsedge sent a communication to Seraikella That is Exhibit "G" on page 253, the third sentence: "It is considered necessary to enlist your country also under the protection of this Government It is intended to preserve and keep intact whatever position, respect, honour, or land, you might be holding from before, and the Government (already praised) means the welfare and prosperity of the country."

That you see takes the history of the State from ancient times down to 1819. My submission is that the position once being established that the State was a full power State nothing could take away from that State subsequently any of its then powers, except its own consent. I can take the history quite shortly There was some slight interference in 1820, but it is important to realise that the document of 1820 was a document between the British and Porahat whereby Porahat *placed itself* under the protection of the British, and there was a Patta and Kabulyat I think executed between the British and Porahat under which Porahat put himself under the protection of the British, and was admitted to the list of Feudal Tributaries of the British Empire in India, and undertook for himself and his posterity obligations of loyalty and implicit obedience to orders In return the Government gave an assurance that "The efficient benefit of which is your maintenance in all your existing rights" The above arrangement with Porahat has led to much confusion as regards Seraikella It has been alleged, in Aitchison's Treaties, and in departmental documents, that similar arrangements were made with Seraikella and Kharsawan This is an entirely erroneous supposition for which there is no justification, no such document can be found in the Records either of Government or Seraikella. On the contrary In the Bengal District Gazetteer (Vol. XX, page 230) it is stated. " It was intended that similar engagements should be entered into by the Chiefs of Seraikella and Kharsawan, but no such agreements can be traced." See also Hunter's Statistical Account of Bengal (Vol. XVII, page 137). "But the official view regarding this matter has resulted in incalculable harm to Seraikella. Even assuming a similar agreement with Seraikella, it would be impossible for Government to reconcile its subsequent treatment of that State with the specific pledge contained in the Porahat agreement" But the truth of the matter is, Sir, I venture to submit, that is another illustration of the way misapprehensions get on to the Records and then become perpetuated and I only want to make these two points upon that. First, that there is no right in Government to guess that some past agreement has been made, of which it has no evidence, and which the State denies, and secondly, that, even had Seraikella made the same form of agreement with the Government that Porahat did, it would not in its true interpretation justify any such interference as subsequently took place. In 1825 there is a minor point which appears on page 246, Sir, in connection with Exhibit "H." Government interfered between

Seraikella and its Feudatory Kharsawan and published an order that Seraikella was not to interfere with Kharsawan in any criminal cases. Then, Sir, there were changes of the grouping, changes of the agency and so on. I am not going into the details of those. I can go on, I think, now; I will not pause with all the details. I can say shortly that at pages 246 and 247 you find certain instances of interference with Seraikella which, in our submission, were not justified and, as a result, finally by 1848 (the middle of page 247*), "The Commissioner directed that all persons confined by the Chief's order should be sent for imprisonment to Chaibasa. The Chief gradually gave up exercising his judicial powers and sent even the most trifling cases to the Assistant at Chaibasa" So that there was nobody in confinement under his orders. That was the result of a progressive interference with his judicial administration The submission made is that if this was the true state of affairs, it was due to progressive unwarranted usurpation of the Chief's powers in spite of his protests.

In 1847 you find that they were interfering with Seraikella's right to mine copper and Seraikella refused to grant a concession which he was asked to grant, saying from his own experience that† "the Sahib-log, once admitted, become masters of their estates"—"of our estates" he meant. During the Mutiny Seraikella rendered incalculable services to the British which received acknowledgment on numerous occasions As a reward, I suppose, for good conduct in the Mutiny, in 1860 Seraikella was directed to pay a licence tax on guns imported In 1870 (page 248, opposite Exhibit "U"), the Government applied‡ the Nazarana of 1870 to the State although Seraikella had never paid Nazarana. There are various other minor infringements until you come to a sanad granted by Lord Curzon in 1899 on the same lines as the sanad of 1894 which you saw in relation to the others. It is the same point, it is exactly the same form of sanad and I need not repeat it Two years later, in 1901 (page 249), Seraikella formally presented a memorial to Lord Curzon by way of protest. The memorial was rejected The summary of the Seraikella case is at the bottom of page 250 It is submitted that the history of Seraikella shows a disregard, unfortunately typical, of two fundamental principles (1) That every State must continue to retain all its sovereign rights and privileges except in so far as it has by consent made a cession of any of them to the Crown (2) That once it is established or admitted by the Government that a State is a State with certain powers, be they full or be they qualified, if at any later date the Government contends that the State possesses any less powers it is for the Government to prove it

There are two small specific matters that Seraikella particularly wants me to bring to your attention, Sirs One is (last paragraph before the bottom of page 250, opposite Exhibit "DD") regarding the latest instance of interference by the Political Agent in the internal affairs of Seraikella which is to be found in his "Inspection Note" of 1927-28, regarding that State He has criticised the State Budget in respect to domestic expenditure, medical relief, education, and

* Bengal District Gazetteer, Vol XX, page 230
† Bengal District Gazetteer, Vol XX, page 140
‡ Resolution of the Government of India, dated 5th March, 1870

other matters. The criticisms are based upon a misapprehension of the true facts and can all be effectively answered Seraikella has protested against this interference with his control over his own Budget, which he submits he is entitled to exercise. There you get the details. I will not go through them because they speak for themselves

The other one is a matter that I omitted in passing (page 246) This is a matter which really I think comes under our next heading, A(a) ii a, namely, the exercise of sovereignty over defined areas. In 1836 the British Government sent a punitive expedition against the Hos who were resisting the Singhbhum Chiefs, whose suzerainty they nominally acknowledged after the conquest of the Kolhan On the conclusion of the campaign the British Government decided to administer all the Ho Pirs, or Cantons, directly, and for that purpose 25 Pirs were taken from several Orissa States, including 4 Pirs from Seraikella, and they were constituted into a new District called the Kolhan, and placed under a new officer who was created with the title of "Principal Assistant" with his Headquarters at Chaibasa. There was no formal document of transfer. It is believed that it was represented at the time that this was only a temporary measure, and that the confidential files of Government will show that Major Wilkinson, the Political Agent, promised to restore them later This, however, has never been done Referring to this, the Bengal District Gazetteer (Vol XX, page 230) says "In 1837, when the Kolhan was brought under the direct management of a British Officer stationed at Chaibasa, the Kunwar was treated as subordinate to him. . . An appeal lay to the "Principal Assistant, while his (the Kunwar's) authority in criminal cases was strictly limited" Thus the process of encroachment began, through being made "subordinate" to a Political Officer! Seraikella feels that there was no right to take away those 4 cantons and that they ought to be returned, and that if the confidential files of Government are looked at it will be found that there is on record a letter from the Political Officer of the time saying they would eventually be returned, that it was merely a temporary administration I am told that all these Bihar and Orissa States complain about the detachment of these 25 Pirs, Mayurbhanj and others, they all take the same view, that it was understood it was to be a mere temporary administration, and was tolerated by the States as such without, I suppose, protest at the time, for that reason, that the circumstances which necessitated in the opinion of the Government that special action having ceased to exist, the Pirs automatically ought to have been returned. They ask for the return now because there has never been any consent to cede that territory

May I call your attention to Exhibit "R" of the Seraikella Case (page 260), an instance of what I suggest to you is a common thing. Here is a gentleman, the Deputy Commissioner, Dr. Hayes, reporting to the Commissioner of Chota Nagpur* "On enquiring into the powers of the Rajah of Seraikella and Thakur of Kharsawan, I find that they have not regularly been vested with any." That is to say, there is no document conferring powers on them; and he assumes that unless the Government has given them powers, they have not got

* Letter No. 90, dated 27th April, 1863

any He goes on: "The papers in my office on the subject are noted in the margin and are herewith submitted and what I gather from them is that it was intended at first that the Chiefs should be assistants to the officer at Chaibasa, and that all cases in their Zemindaris in the first instance should be lodged with the latter and he was to make them over to the former for trial just as is now done with the Assistant Commissioner" and so on. Those five papers referred to there are all referred to in the body of the memorandum and you will see what is said about them. They were simply attempts to interfere and several of them were turned down, if I remember rightly Paragraph 3 of the same letter "Nearly every officer who has been here has made *some objection to the powers exercised by the Zemindars and either* passed some new orders regarding it or after a little enquiry, let the matter drop I think therefore that some specific instructions are necessary." Then you find on page 261 an interesting document the Commissioner of Chota Nagpur writing to the Deputy Commissioner, the second paragraph It is the answer to that letter which I have just read* "The papers you have submitted do not bear out your views of the question; they simply show that up to August 1838 these Chiefs were only required to submit their proceedings in cases of murder, and this was originally the rule in regard to all the Chiefs of the Tributary Mahals" The last paragraph is "I have been instructed by Government to draw up rules for guidance of the Political Chiefs in the exercise of their judicial powers, when promulgated they will apply to the Chiefs of Seraikella and Kharsawan, and in the meantime I see no necessity for making any alteration in the existing order of things The interference you suggest in regard to establishments I do not consider we could justifiably exercise in Seraikella" That is the sort of history Then the next thing is in 1864 about the Seraikella rules I do not think I shall trouble you with those That is all I need ask you to consider, Sir, in the case of the State, Seraikella.

Chairman These are only illustrations of the principle that you wish to bring forward, are not they? You have already said that it is recognised that we cannot redress these?

Sir Leslie Scott Oh yes, as regards the rest of the cases I mentioned *just now, I am only going to call your attention to one or two points,* just where there is variation or where there is any additional light thrown.

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* Letter No 860, dated 16th May, 1863.

Minutes of the Evidence given before the Indian States Committee at Montagu House, Whitehall, S.W.1.

Tuesday, 16th October, 1928, at 3.45 p.m.

PRESENT:

Sir HARCOURT BUTLER, G.C.S.I., G.C.I.E. (*Chairman*).
Colonel The Honourable SIDNEY C. PEEL, D.S.O.
Professor W. S. HOLDSWORTH, K.C.
Lieutenant-Colonel G. D. OGILVIE, C.I.E. (*Secretary*).

Their Highnesses the Maharajas of KASHMIR, PATIALA and NAWANAGAR, and His Highness the NAWAB OF BHOPAL

The Right Honourable SIR LESLIE SCOTT, K.C., M.P., *appeared on* behalf of the Standing Committee of the Chamber of Princes.

Sir Leslie Scott The Committee will remember that I described Seraikella yesterday I am afraid that I must finish off this task, which is a little tedious, because it means referring to a number of different pages on the same subject, but I regard it as essential. The next one is Mayurbhanj (page 65). I do not know whether Colonel Peel remembers that Mayurbhanj is still further away from Nagpur. Nagpur was away in the west (Sir Leslie Scott indicated Mayurbhanj on the map) The green patch to the north-west of Mayurbhanj in two pieces is Seraikella The little yellow bit is Kharsawan, which was referred to yesterday. Being further away, it was more out of the influence of the Mahrattas

The points relating to Mayurbhanj are these. It may be perhaps convenient just to make a note of them on the top of the page. (1) There was no treaty with Mayurbhanj till 1829.* (2) In 1829 the same treaty was made with Mayurbhanj as had been made in 1803, as I explained to the Committee yesterday, with a large number of the States—(it is practically the same) The third point is that Mayurbhanj had no less rights to sovereignty than any of the others; and in certain ways the position of Mayurbhanj is even clearer. Clause 6 of the Treaty under which Mayurbhanj undertook to exercise its sovereign right of bringing its army to the assistance of the company is the same clause as there was in the other Treaties of 1803. The fourth point is this At some date that I cannot give you for the moment, the opinion of the Advocate-General of Bengal, Mr. J. T. Woodroffe, now Sir John Woodroffe, was taken, and his opinion is that Mayurbhanj was an independent State with full powers, in the sense in which I use the word "independence" as relating to internal sovereignty. The fifth point is that the position of Mayurbhanj was dealt with by a High Court Judgment of the full bench of Calcutta

* Treaty engagement executed by the Rajah of Killah Mohur Bhanj, 1829

High Court, where the position was declared on the lines that I have indicated. The sixth point is that during a minority there was a curtailment of its powers, and I will deal with that.

You need not for the moment read the memorandum on page 65; but I would ask you at some time to read the whole of that page and the first two paragraphs on page 66 It is just a little history of the State. It is quite tersely done and very relevant. On page 66, in the third paragraph, it is stated that from the terms of the Treaty of 1829 it is clear that Mayurbhanj placed itself in subordinate co-operation with the British Government (Vide Clause VI), and no restrictions upon the internal administration of the State were imposed by the Government The State was entitled to enjoy, subject to the terms of the Treaty, complete internal autonomy That is the big point here, as it is in every one of these States, and a point, in our submission, of very great importance

Now would you kindly turn to page 68 for a moment? At the top of the page you find the reference to the opinion of Sir John Woodroffe. The then Ruler of Mayurbhanj was dissatisfied with the position in which this Sanad—that is the Sanad of 1891, and I think it was that year that the opinion was given—Col. Haksar tells me so—purported to place him, and obtained the opinion of the Hon J T. Woodroffe, then Advocate General of Bengal, that the Sanad "in various ways derogates from his rights as the Ruler of a Tributary State possessing, under the suzerainty of the Queen Empress of India, sovereign powers which, though not unlimited, are yet of considerable extent, and that the Raja should without delay memorialize His Excellency with respect to that Sanad and ask for its withdrawal or amendment" That the provision relating to criminal powers "infringed upon the powers previously exercised by the Chief of Morbhanj." Then, referring to the clause which requested the Chief to "comply with the wishes" of the Superintendent, even in matters of detail of almost all the branches of administration—that is Clause VIII of the Sanads you saw yesterday—Mr. Woodroffe stated as follows: "How or when the Government of India obtained a right to deal with the various and wide-reaching matters dealt with in this Clause I know not. The past history of this little State in its relation to the Empire of India affords, so far as I am aware, no previous claim to exercise such practically unlimited interference" Then, referring to the preamble of the Sanad—that is the end of the definition—he observed "This is not to define the status of the Morbhanj Territory, it is, I humbly conceive, to annihilate it" Then he goes on "For myself I feel forced to the conclusion that this Sanad emanated *per incuriam* from the Government of India, and I venture to think upon that Government being memorialised on the subject, the Sanad will be materially altered. But if not, there stands a power behind the Viceroy" and so on The rest does not matter. It was only the legal opinion of a man who was the Advocate General of Bengal, which I thought was relevant for the Committee to consider. The consideration of an individual case upon a memorial or otherwise may, of course, result in a very little appreciation of the real magnitude of the issues involved, but when you get all the different States put together as I have been doing here for the Committee, you get as a result a case, I submit, of

great force. It is the very fact that you get all these States all initially in the same position and all subsequently treated in the same way—their powers being curtailed by means of the Sanads—which is the really important aspect of the whole of this group of States The Treaty is given on page 69. I need not refer to it, but I ask you to look at it to verify the statements I have been making as to the effect of the evidence

Now one word about the minority. On page 67, the third paragraph, you will see that from 1881 to 1892 the State was under the direct administration of the Government owing to the minority of the Ruler and there was no opportunity for the Mayurbhanj State to protest against the recommendations of Mr. Staley (1889) for the curtailment of its powers. You will remember I read those yesterday. Mr. Staley was appointed by the Government of Bengal to inquire and report upon the powers which the Rajas might in accordance with treaties, past legislation, and established custom, "safely" be left to exercise within *their territories When the Ruler attained his majority he took the* matter up Then in July, 1894, Mr Cooke, Superintendent, Tributary Mahals, Orissa, took exception to the Maharaja passing a sentence in criminal cases which would be beyond the competence of a Magistrate of the First Class in British India and claimed that he and his assistants alone could try Sessions Cases arising in all the States. The Maharaja immediately protested against this claim, and in a memorial to Government be submitted *inter alia* as follows: "The practice as to criminal jurisdiction adopted during his minority should not be treated as having created a jurisdiction which did not previously exist, nor should it be made by the Superintendent a cause of complaint that your Memorialist did not continue the procedure which naturally existed while the State was in the hands of the British Government and was *being controlled by the Superintendent during your Memorialist's* minority" That was in July, 1894. On the 31st December, 1894, the Maharaja received a Sanad dated 27th October, 1894, signed by Lord Elgin, while the said Memorial was still under consideration by the Government. That is the Sanad of 1894 that we saw yesterday. I venture to suggest that that is an additional point of real importance, that the judicial powers were curtailed during the minority, exercised by the Superintendent during the minority, which would be perfectly right, assuming it was right for any power to be exercised by the British Administration during the minority, but that they ought not to have been continued afterwards and the Raja had an unanswerable case The fact that the Government issued a Sanad cutting down the powers without even answering his Memorial is an illustration of the kind of treatment which I venture to submit is intolerable, absolutely intolerable, and bound necessarily to create in the minds of the Princes feelings of uneasiness, anxiety, and almost of desperation at getting what they consider justice That is a very important aspect, as I am sure the Committee will appreciate, of all encroachments. When they are done in that kind of way, I venture to submit the grievance is very greatly accentuated. The case which decided what the position of Mayurbhanj was is referred to on page 60; it is reported in the 8th Volume of the Calcutta Law Reports; it was a decision of the full Bench The judgment of the Court

followed the judgment of Mr. Justice Pontifex at page 989, 8th Calcutta Law Reports. Part of it is quoted on page 66. I want to read just two sentences from it · "The question whether the territory of Mohurbhunj is within the limits of British India is a question of evidence. There is nothing to show whether the Mahrattas exercised direct authority over this territory, or whether they treated it merely as tributary. From its situation and character, however, the probability would seem to be that the Mahrattas only exacted tribute from it. Nor does the cession by the Mahrattas to the East India Company throw any further light upon the matter If the Mahrattas had only the rights of a paramount power, the East India Company could, under the cession, gain no higher rights" Now the sentence there is important because it is a judicial declaration to the same effect as my submission to the Committee yesterday as to the effect of the treaty of Deogam. That is referred to at page 15. I referred to it yesterday. I am going to ask you kindly just to make a note of this case at that point You see at the bottom of the figures under Group I "These States, along with some Garjhat States now in the Central Provinces, were ceded by the Government of Nagpur finally to the East India Company in 1826", and I explained to you there that what was ceded, of course, was the right to receive tribute, such suzerain powers as the Bhonsle possessed and no more The word "ceded" is used I think it is used in the treaty, but that is the meaning of it It is not that the territory is ceded as territory over which the sovereign of Nagpur exercised internal sovereignty it is territory out of which or from which he was entitled to receive this tribute and nothing more That is the sentence of Mr Justice Pontifex's judgment: "Nor does the cession by the Mahrattas to the East India Company throw any further light upon the matter If the Mahrattas had only the rights of a paramount power, the East India Company could, under the cession, gain no higher rights" It is to get rid of any misapprehension as to the possibility of the language of the treaty of Deogam indicating anything more than a cession of paramount rights, and in that context would you kindly look for one moment at the Treaty of Deogam in Volume I of Aitchison, which Colonel Ogilvie was kind enough to promise to have here If you look at page 417 you see "Done in Camp at Deogam, the 17th September, 1803" Article 3 was "He likewise cedes certain territories", and Article 10, as I pointed out yesterday, confirmed the previous treaties made Then you come to the treaty of 1826 on page 427 Article 5 "The late Rajah . commonly called Appa Saheb, agreed to cede to the Honourable Company certain territories for the payment of the expenses of the permanent military force maintained by the British Government in His Highness's territories and in lieu of the subsidy of Rs 7,50,000 formerly paid by the said Raja, and of the contingent he was bound to maintain by the former treaty These territories, as detailed in the schedule annexed to this treaty, shall remain for ever in the dominion of the Honourable Company His Highness the Maharaja hereby expressly renounces all claims and pretensions of whatever description on the territories aforesaid" That is the cession that is referred to in the sentence in the judgment that I have just read Then the other sentence in the judgment is on page

990 (Vol. VIII, Calcutta Law Reports) which you have printed in the evidence here (page 66): "The treaty engagement of 1829, if it stood alone would, in my opinion, be conclusive to show that Mayurbhanj was merely tributary. It is of a different period to the engagements with the other mehals. It proceeds from the Raja of Mayurbhanj without any reciprocal instrument in the nature of a patta or sanad from the East India Company, and it speaks of 'my territories,' of 'a contingent of my own troops,' and of 'my successors,' which is not the language which the Executive Government would be likely to tolerate from a mere subject. Then come the rules of 1839 issued by the Bengal Government * They assume that there was something peculiar in the status of this territory; and on the whole they do not seem to me inconsistent with its being tributary. All they do is to invest a Bengal officer with necessary authority as the representative of the Paramount Power to act *at the request of the Raja.* No civil jurisdiction has ever been exercised in the territory by the Executive Government of India. Lord Canning's Sanad distinctly deals with the territory as independent and not British territory. We know both the Government of India and the Government of Bengal consider the territory to be independent." Now that is the case of Mayurbhanj. In my submission there is no evidence there at all to show that Mayurbhanj had not complete internal powers

The other one is Dhenkanal (page 95). I can take that very quickly. In my submission there is no difference between Dhenkanal and the other cases, but there are two additional points I want to draw attention to Do not trouble now to read anything on page 95 or at the top of page 96; but in the middle of page 96 you see a reference to the year 1867· In 1867, Lord Canning granted Adoption Sanads to certain Chiefs of Orissa, and in a communication of 7th August, 1868, the Local Government excluded several States, including Dhenkanal, from the list of those liable to pay nazarana on the ground that, under their engagements, "Government is bound to exact from them no further payment, however trifling, under any name whatever."

You remember that about that time, about 1868 to 1870, there was an attempt made to apply nazarana rules to States The attempt was made to apply them to some of these States; but these States had Kaool-Namahs given to them in 1803 by the Government which in express language excluded the possibility of exacting any form of money payment from any of them You find (on page 99) a specimen of Kaool-Namah executed by the East India Company to the Chiefs of Orissa.† The tribute is mentioned there and fixed, and Clause 2 says: "No further demand, however small, shall be made on the said Raja or received from him, as Nazar, supplies or otherwise."

Now Dhenkanal says, and the other States of the group which are in the same position say, that "that makes it perfectly clear that the tribute we had to pay was the only obligation we had." Those States

* The reference is to the rules proposed by Mr. Moffat Mills, which had not

that had not got that document say, very naturally: "We are not the worse off because we have not got that express promise, because we had the treaty of the same year which left us with our sovereign powers Most of us had to pay a tribute; most of us had always to pay a tribute; we recognised that that tribute would continue, but beyond that there was no right to interfere with our sovereignty" That is that point.

The other point is (page 97) another minority case. In the case of Dhenkanal one of these sanads was actually given to the State during a minority. So far as Dhenkanal is concerned it has been the victim of further misfortune, namely that from the year 1877 down to the year 1906, owing to the minority of successive Rulers, it continuously remained under the management of the Court of Wards which is controlled by the Superintendent of the Tributary States It was during the minority of the Raja of Dhenkanal that the first Sanad of 1894 was granted to Dhenkanal and the rules of 1880 regarding capture of elephants in the jungles of Dhenkanal were framed. These rules have proved as detrimental to the interests of Dhenkanal as to those of the other Orissa States In fact there has been a steady deterioration in the status and rights of Dhenkanal during minority administration when the Ruler was unable to safeguard his own interests. Colonel Peel will notice the view of one of these States expressed there This is just their own document on the question of the elephant rights I think that answers to some extent the question that he put to me yesterday. It shows they regarded it as very important

Colonel Peel. They may have been bad rules with regard to elephants, but the people who made the rules may have had a perfect right to make them You are saying they had not got the right.

Sir Leslie Scott: I thought you rather indicated two points. one as to whether the rules were as I suggested, *ultra vires*, secondly, a question of whether it was a matter of any really great importance It is on the latter point that I was making the suggestion, that the view of the State here is that the right to catch elephants is one of very great importance

Colonel Peel: The only difference between you and me is that you said the elephants were a gold mine and I said they were a travelling gold mine

Sir Leslie Scott. Then that is a difference that we can allow to remain without its mattering much I deal with the question of these Rules first of all as they come in order of date You will find the Elephant Rules* on page 27 and I want the Committee to look at them for a moment Now, the point is, firstly, that the Government set out here to limit the rights of the State as to catching elephants by means of elaborate regulations controlling them rigorously, just as rigorously as if it were British territory, and, secondly, to make a good deal of money out of it You notice Clause 2—the taking of a wild elephant for its tusk or any other purpose is absolutely prohibited 3 Licences may be granted to the Chiefs to catch elephants within their respective territories and licences may, with the sanction of Government, be given to other than the Chiefs of the States 5 Each licence is for one year

* Rules for the preservation and capture of elephants in the Cuttack Tributary Mahals

only. 6 Government shall have the right of pre-emption in one-half of the elephants caught, and it may purchase such elephants from the licensee at certain prices, and milk calves will go with their mothers 7. No person who catches elephants under a licence shall dispose of any of them which measures six feet or above, without first making an offer of the same to Government at the prices noted in paragraph 6 9 Every Licensee shall render a report Then 11. If any person shall cause injury or catch a wild elephant without a licence, there is a penalty not exceeding 500 Rupees, and the elephant if caught shall be confiscated, and if any male elephant is killed its tusks shall become the property of Government. 12. When, under the sanction of Government, licence is granted for catching elephants within any specified tract of country to any person other than the Chief of the State within which the said tract lies, the licensee shall, in addition to the royalty specified in paragraph 8 of these Rules, pay rent at such rate and on such terms as may in each case be determined by the Superintendent of the Tributary Mahals Now, of course, you feel naturally that these are mere details and do not touch the principle, but they illustrate the extent of the grievance felt by the States. Here is a State *ex hypothesi* with an absolute right within its own borders to control the elephants and do what it likes; that is their view.

Colonel Peel. Their own hypothesis

Sir Leslie Scott: That I am putting in order to make a submission. The Government comes in, controls the exercise of the right and takes a considerable amount of money. The State naturally says, "Where is my sovereignty?—coming and interfering in all these details in order to make money out of it" That is the view taken by the Rulers. Now I make my legal submission upon it, and my submission is that that view is absolutely right and that there is no shadow of pretext upon which Government can make these rules Colonel Peel was good enough to say it might be there was a power to make them, but my answer is, there cannot be a power to make them unless the source of that power can be traced and explained; the only source of sovereign right that Government can have over any State is a cession at some point of the State's history to the Government of that right, or of greater rights which include it You cannot get it otherwise. The reason why these Elephant Rules seem to me of great legal importance is that they test that question very directly—where was the right of the Government to do this? That is the point that I respectfully submit.

Colonel Peel: Assuming that these elephants are inter-State affairs, even then the Government of India have no right to make rules? Is that your contention?

Sir Leslie Scott: Of course they have right, in regard to inter-State affairs; I have said that very explicitly in the Opinion. I am assuming for the purpose of going into this evidence, and adverting to the legal principles involved, that the Committee has in mind what has been put forward in the legal Opinion. I do not want to have to repeat what is in the legal Opinion every time in connection with the evidence; I am assuming that the Committee have been so good as to study that Opinion very very carefully. It is a document of great importance, worked out with very very great care—I speak of the other signatories than myself—by men of very great experience, very great knowledge, whose opinion is entitled to have as great weight as the opinion of any

lawyers in the world—I say that as regards two of them—and I assume that the Committee is familiar with the reasoning and views expressed in the Opinion: and if that Opinion is right, then what I have said to the Committee just now is the mere corollary of that Opinion. We have said perfectly clearly in that Opinion that the giving up to the Paramount Power of foreign relations *ipso facto* gives to the Paramount Power certain powers of regulating the relations of one State with another. When Colonel Peel was good enough yesterday to raise the question as to whether these Elephant Rules may not have been applied because inter-State matters were concerned, I replied at once that if that were so that would have a very direct bearing on the question of their validity I did not know when the question was put to me by Colonel Peel what the position was I had assumed that it was a purely internal matter. I have since made enquiries and I am told that it is a purely internal matter within the State, that no inter-State question is raised at all by these Rules as a whole, and that if that is so, then it does not arise In the Opinion we pointed out that certain questions of disputes between States, for instance, must be regulated by the Paramount Power because each State has given up its ancient right of regulating all disputes with its neighbour by going to war. Consequently it follows that for the general peace of India the Crown must have some considerable rights of control over the dealings of a State with its brother States and neighbouring States But whether Elephant Rules—even if elephants were under consideration, where they pass from the border of one State to another—came within that general category, what the resultant powers would be is a matter to which one would have to give very careful thought I am not dealing with that, I am assuming that these Rules deal in the main with the right to catch elephants within the State regardless of any other State. I leave that on one side and assume that if that were an inter-State question, that might be dealt with by Government I am not dealing with that aspect I am only dealing with these Rules as within the State Does that make my contention plain?

Colonel Peel. Quite Your contention is that these elephants are confined to only one State

Sir Leslie Scott In practice, the right of a State to catch elephants is the right to catch elephants in its own State, in its own territory I happen to remember the Returns of the State of Tripura The Annual Returns for its own financial purposes contain a record, just like our Board of Trade Returns, of sources of revenue One source of revenue is the elephants caught within the State—I just happen to remember that at the moment—and it is a valuable right Mr Charles Bagram from Calcutta tells me that Dhenkanal catches a great many elephants It is worth between £3,000 and £4,000 per annum

Colonel Peel: To whom?

Sir Leslie Scott To the State of Dhenkanal

Colonel Peel: It does not seem as if they have much to complain of

Sir Leslie Scott: £3,000 or £4,000 is a very considerable sum to a small State

Chairman We need not pursue the question of elephants.

The Maharaja of Patiala I know that sometimes questions regarding lions and tigers, even, have been looked upon as inter-Statal ques-

tions My friend Colonel Ogilvie knows of such instances But in the case of elephants, the right of catching them being a valuable State property, it seems a pity that Government should assume such an excuse as conferring a legal right to interfere, to impose its own Rules on the State, and to make a profit.

Sir Leslie Scott: I would just like to remind Colonel Peel of the first line of the Elephant Rules The right to catch elephants within the Tributary Mahals—that is to say, within each of those States—is reserved by Government. I cannot help feeling very much impressed with the importance indirectly of the question raised by Colonel Peel. Ultimately, in our submission, the big questions to be decided are, what are the rights of the State and what are the rights of interference of the Crown? Where are you to draw the line? We have put forward in the Opinion perfectly clear principles. This illustrates it from a lawyer's point of view with great clearness It may be that the amount involved to each of these States is comparatively small, and yet, if it illustrates the principle clearly, it is a very useful and a very important illustration That is what I do so very much want the Committee to appreciate in the case that we are trying to present to the Committee, that we are on principles and that facts that look as if they are unimportant may throw a flood of light on the question of principle affecting every State in India from the smallest to the very greatest. And as a lawyer dealing with principles, I do not recognise that the size of the State or the amount of the money interest at issue is any gauge or criterion of the importance of the point from what, I submit, ought to be the attitude towards the inquiry of any investigator. I will not repeat it, but I ask the Committee to bear in mind my submission, and can do no more than put it respectfully.

I am afraid I have not finished Dhenkanal. I dealt with the first minority (page 97). In 1906 Dhenkanal, upon attaining majority together with certain other Rulers submitted a Memorial to Government protesting against being degraded from their original position as Treaty States to that of Sanad Chiefs, but it had no effect I leave the next point, that is the application of certain laws of British India to these States, in my submission, without authority. In 1918 the present Ruler succeeded as a minor and during his minority was unable to watch the interests of his State. His State was "released" in 1925. During the minority of the present Ruler much harm was done to the State. On the 23rd August, 1922, a Notification was issued that the construction of a railway by the Bengal Nagpur Railway had been sanctioned by the Secretary of State to serve the Talchar Coalfields. By a letter dated 9th November, 1922,* the Political Agent informed the Superintendent of Dhenkanal State that he had been "directed by Government to request you to cede jurisdiction on behalf of the minor Chief over the portions of the State territory which are to be or may hereafter be occupied by the railway." A form of cession was enclosed for signature On the 24th November, 1922, the Superintendent gave the cession "on behalf of the minor" of the land and "over all persons and things whatever within the said lands." The State was paid

* Letter No. T G 1235, dated 9th November, 1922, from the Political Agent and Commissioner, Orissa Feudatory States, to the Superintendent of Dhenkanal.

inadequate compensation for the land as will appear from the letter* (Exhibit "N"). In a letter dated 31st October, 1925,† from the Political Agent upon the present Ruler attaining majority it is stated that the Governor in Council sanctions the release of the State subject to certain very restricted conditions which will appear from the document. You will see those conditions in the document itself on page 109 (Exhibit "O") "(i) That the Chief will appoint as his Dewan an officer who has been previously approved by the Political Agent. (ii) That he will continue to employ the services of the Agency Forest Officer and the Agency Inspector of Schools. (iii) That he will continue to employ the services of the Agency Engineer till a new Cutcherry is built and (iv) That he will for the next two years submit the Annual Budget for the approval of the Political Agent and Commissioner and that no alteration in the budget so approved will be made without that officer's previous sanction. 2 The Governor in Council also sanctions that the Chief should be vested with the powers of a Sessions Judge and that he should delegate these powers to his Dewan These powers will be personal to the Chief and his Dewan and will be liable to revision in case of a change of Chief or Dewan" I respectfully submit that there is no sovereign right vested in the Paramount Power to impose these restrictions upon a Ruler who is of age I can express no opinion as to whether in certain cases it is desirable that there should be such an arrangement I can conceive cases where such control and advice might be desirable but there is no power to do it; it is a matter for which in my submission the Paramount Power has no authority. If you will look at the form of cession that was executed for the Railway jurisdiction (page 109), that is what was called in 1899, 23 years earlier, the "prescribed form." It was the form which was invented by the Government of India to try and get over the decision of the Privy Council in the Hyderbad case. I shall be dealing with that when I come to the next head, but I ask you to note the form there and kindly make a note against it of the Muhammad Yusuf-ud-Din case reported in XXIV Volume of Indian Appeals, page 137 You are very familiar with it I know, Sir, but I should be grateful if Professor Holdsworth would look carefully at that report

Professor Holdsworth: Certainly.

Sir Leslie Scott During that same minority (page 93), there was a boundary dispute The Political Agent decided it during the minority Dhenkanal, on getting his powers, protested, and you find the letter‡ there (Exhibit "P"), saying that as the Political Agent had decided it there was an end of the matter, and nothing more could be done. That cannot possibly be right Assume that boundary disputes ought to be decided by the Paramount Power, assume that it cannot be decided without each State being adequately represented, in a position to put its case, it cannot be done during a minority It can be done provisionally during a minority, perhaps, but if the Ruler, on getting his full powers, says, "I am dissatisfied, you must hear me, hear what I

* Letter No 1812, dated 27th July 1922 [illegible]

have to say about this": I say he is entitled *ex debito justicie* to hear it. You see the reason given in the Political Agent's letter (Exhibit "P"), 3rd paragraph: "Mr. Peck took up the decision of this dispute at the request of the Superintendent of Dhenkanal, acting on your behalf." That is to say the British officer acting as Administrator during a minority asked Mr. Peck to do it, and said he would accept the decision. He had no power to bind the poor little minor.

Now, Sir, I have done with the individual cases, except Baud (page 1). The points on it, Sir, are these: (1) It is the same as most of the other States in Bihar and Orissa, except that the Treaty with it was not made until 1804, and that it was given a special counter-engagement of friendship The Treaty of 1804 was practically the same as the Treaties of 1803, but it pays no tribute Baud would have been to-day quite a big State, but for three alienations of its territory which have taken place since 1804, the first, as Baud submits, invalidly.

The first one was the Panchara Pargana, which was put in to the Sonepur State In 1855 the matter was taken up and decided against Baud. A memorial was submitted in 1908, but the Political Agent refused to forward the memorial to the higher authority. That, I submit, is *prima facie* wrong. *Prima facie* memorials ought to be forwarded, particularly where there is a case of importance, like this. You will find, Sir, instances in the course of the evidence of refusals of Political Officers to forward memorials to the Local Government, of refusals of the Local Government to forward them to the Government of India, and refusals of the Government of India to forward their memorials to the Secretary of State That system, in the submission of the States, is extraordinarily unsatisfactory, and it is a method of treatment of the States bound to cause very grave dissatisfaction. The system of an address by means of memorials is bad enough in itself, the absence of judicial determination of justiciable issues, but if you add to that that difficulties are put in the way of States who want to send a memorial up when they have got an important case, I venture to submit that it makes the system an absolutely impossible one.

Chairman. What is the actual date that you are referring to?

Sir Leslie Scott: 1908 The next alienation is dealt with separately under the next head. It was the Hill Country that is now known as the Khandmals. The third alienation is of the tract of territory known as Athamalik State The tract of country now known as Athamalik State was from ancient times a part of the Baud State, and the Governor or Ruler appointed by Baud over Athamalik had no direct relation with the Paramount Power. Even after the conquest of Orissa by the British, the Rajah of Baud executed the Treaty of 1804 as Rajah of Baud and Athamalik, and a counter engagement was made on behalf of the East India Company. That is in a double capacity. But in 1875 the Ruler of Athamalik entered into a separate engagement with the British Government, and Athamalik thenceforward began to be recognised as a separate State without any apparent reason or reference to the Baud Chief. Had not these alienations taken place, Baud State would have occupied the second place amongst the Orissa States and 27th place amongst the States of India. The whole details are not set out, because it would be an individual case, and no doubt would involve a big investigation

which would be impossible for you But that is the complaint of Baud on that head. There is very little in the text that I need trouble you with, I think. On page 2, apart from these questions of alienation, you get certain important encroachments These engagements—those are the engagements of 1803—fully recognise the sovereign power of the Chief over his territory under the Paramount Power of the East India Company, and the Chief, under the terms of the Treaty, had to maintain an army of his own to help the British contingents whenever any disturbance broke out in any neighbouring State. In 1821, a Peskus or tribute of 800 Rupees was for the first time, and, it is submitted, unjustifiably, imposed upon the State, and later on was fixed in perpetuity in direct contravention of the first treaty engagement That is Clause 2 which I read to the Committee, which said that no tribute of any kind should be exacted Then you find (pages 2 and 3), attempts by different officers acting as Superintendents to impose various rules upon the State, which were in each case disapproved by the Government on the ground that they were an interference with the State sovereignty That was in 1821, 1839 and 1840 Then you get the Elephant Rules in 1880 The Government did exactly the opposite, and did the very thing which it had disapproved in the earlier years. That is followed by the sanads of 1894, 1908 and 1915 This State also complains bitterly of the "Feudatory States Manual" (page 3) I do not know whether you have been able to get a copy of that Manual, Colonel Ogilvie?

Secretary · No, it is not obtainable in London.

Sir Leslie Scott · Then, in that case, I think, it would probably be more convenient if I were to have the short passages from the Manual typed out and given to you when I make my general address at the end, because it is a general point, and I will keep it for then. Does that meet with your approval?

Chairman. Yes

Sir Leslie Scott · Here is another minority case in Baud The present Rajah was a minor from 1913 to 1925, and during those years the State was under administration (page 3) You see he says there with some pride he had a very good scholastic career and did very well Since 1925 this unfortunate State has been submitted to all manner of interferences and excessive control. You find the control indicated (pages 9 and 10). The Budget is controlled in every detail You appreciate I am on the pure question of right—as to whether there was any right to do it My submission is that there was no right The object may have been benevolent I am not raising any question about motive at all, but I am merely dealing with the question of right, with a view of getting these matters put upon a satisfactory basis That is all I have to say about Baud

Then I come to the Central Provinces States They are taken generally like the Bihar and Orissa States (page 28). As the Committee knows, they are very similar, broadly speaking, to the States of Bihar and Orissa, though there are certain differences. The first State in the group (page 28), Bastar, as you see, has an area of 13,000 square miles It is a very large State, with a population of nearly half-a-million. It is an ancient kingdom Those six in Group I (Bastar, Kanker, Khairagarh, Nandgaon, Chhuikhadan, Kawardha) did not come into relations with the Crown till 1854 on the annexation

of the Nagpur State. Of those six States, the first three are very old States. The second three, Nandgaon, Chhuikhadan and Kawardha, were grants from the Raja of Nagpur, the Bhonsla, during the first half of the 18th century; they were tributaries of his. Broadly speaking, the rest of the States are open to the same kind of consideration as the Bihar and Orissa States, although some of them were very old. As to Surguja, the first State of Group 4 (Surguja, Jashpur, Udaipur, Korea, Chang Bhakhar), you will find about that on page 37. The Maharajah of Surguja claims to be 114th in descent from the original founder of the State, early in the Christian era It is 6,000 odd square miles. Many States which are allowed higher rank than Surguja have an area of less than a thousand miles and smaller revenues and population. Out of a total of 118 saluted Ruling Princes and Chiefs in India, 100 have a smaller area than Surguja. Then, on the latter half of page 37, you will see a reference to Bastar. The area of Bastar is 13,000 square miles, and it is 9th in the order of Ruling States in point of size. It is descended from the old Deccan dynasty of Warangal, and yet it is in a very minor position as regards the Chamber of Princes. On pages 28 and 29 the history of these States is given. Groups II (Raigarh, Sarangarh, Sakti), III (Makrai), and IV (Surguja, Jashpur, Udaipur, Korea, Chang Bhakhar) came into contact with the British in the earlier part of the 19th century, some of them in 1803 That is Raigarh, Sarangarh and Sakti first of all in 1803 and finally in 1826. Raigarh because it helped the British very much in 1803, I think it was. Sarangarh and Sakti were returned by the British to Nagpur in 1806, and then came back to British paramountcy in 1826, with, at the same time, some of the States in Bihar and Orissa with which I have already dealt. With the exception of the three that I have mentioned, Nandgaon, Chhuikhadan and Kawardha, all the States in the Central Provinces date back to a distant past and do not originate by grant from Nagpur. Makrai, which, as you will remember, is away to the west, was never a Tributary State. On page 30 you will see that in 1862 Adoption Sanads were given to Bastar and Makrai, and to the rest of Groups I and II in 1865. They are worded in exactly the same way as the Adoption Sanads of the greatest States: "Her Majesty being desirous that the Governments of the Several Princes and Chiefs of India which now govern their own territories should be perpetuated"* and so on. Then (in the latter part of page 30) you get a reference to the inquiry made by Sir Richard Temple, pointing out that Sir Richard Temple never really ascertained what the truth was about the origin of any of these States, and that is made very clear from a sentence in his Report which appears just a little later on. Sir Richard reported in 1863, just after the Mutiny, when the work of pacification of the country was still continuing and when that was the main object. That is the thing that he was really concerned with It was taking measures with a view to the pacification of the country. On page 31 you will see, in reply to his Report, the Government of India remarked† that that Report was not altogether satisfactory as to the relationship in which each of the groups of Chiefs really stood to

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* Aitchison, 4th Edition, Vol. I., page 441

† G.I. No. 77, dated 21st May, 1864.

the British Government They finally sanctioned* his proposal to class them as feudatories and authorised sanads being granted. Now at the same time that the sanads were granted to many of them in the year 1866, Government sought to obtain from these Chiefs what were called fealty bonds They were all summoned to a great Durbar to receive adoption sanads, which of course by that date, January, 1866, had become known all over India as documents of great value to be greatly prized as unqualified recognitions by the Crown of the sovereignty of each State They are summoned to receive these sanads, and at the Durbar the British officer produces fealty bonds already drafted for them to sign Many of them signed this fealty bond at the Durbar in exchange for the sanad Bastar apparently saw more of what was in the bond than the others and objected to signing it and would not sign it until 1870. The record about his signing is "It was not, however, till the 19th December, 1870, that the Rajah of Bastar was persuaded to execute his bond, as he objected to the conditions therein about forest conservancy and tribute" (Aitchison, Vol. I, page 391)

Now would you mind turning to the bond † just to look at its terms (pag 43) it contains seven clauses It purports in the first line to describe the Chief as a Chieftain· "I am a Chieftain under the administration of the Chief Commissioner of the Central Provinces. I have now been recognised by the British Government as a feudatory, subject to the political control of the Chief Commissioner, or of such officer as he may direct me to subordinate myself to. I will respect and maintain all rights within my territories; I will attend to the prosperity of my ryots, to the strict administration of justice, and to the effectual suppression of crime When a criminal convicted before me shall merit the punishment of death, or a term of imprisonment beyond seven years, I will refer the case to such British officer as the Chief Commissioner may appoint before I punish the offender If any person who has committed an offence in my State shall fly to British or other territory, I will represent the matter to British officers, in order that the offender may be given up Should any persons who have committed offences in British territory, or criminals belonging to British territory, seek refuge in my country, they shall be pursued by officers of the British Government, and I will render every assistance in capturing and delivering up such fugitives. I will pay into the British Treasury an annual tribute of . . . ., and when the amount of my tribute may come from time to time under revision, I will render every assistance towards settling such amount I will always pay punctually such tribute as may be settled. I engage not to levy transit duties within my jurisdiction, neither by myself nor my successors I will take such an order with my subjects that they shall have no cause to complain against injustice of mine: and when complaints preferred against them are referred to me by British officers, I will dispose of them equitably When the Chief Commissioner, or his officers, shall give me instructions or advice, I will obey instructions and accept such advice, and I will conform, and cause my subjects to conform, to such Forest Regulations as the Chief

* G I No 289, dated 3rd April, 1865

† Acknowledgement of Fealty, presented by Lal Futteh Sing, Zemindar Khyraghur.

Commissioner may be pleased to prescribe If at any time, through the misconduct of myself or my successor, my State should fall into great disorder, or great oppression should be practised, then I, or my successor, shall be liable to suspension or forfeiture of my or his governing powers"

Now, Sirs, my submissions about that document are these. The last clause is a mere enunciation of what is implied in my submission in the agreement of paramountcy, and there is no further comment to be made about that; but where the agreement, whilst treating him as a Chief with sovereign rights over his territories, seeks to impose upon him an obligation to obey the orders or advice of a British officer, in my submission the Government were asking each one of these Chiefs to agree to something that they ought not to have asked him to agree to It was a direct encroachment upon his powers, and, without a real explanation of what it meant, I venture respectfully to submit that it was wrong. To think that anyone of them on understanding what was in it would have signed willingly and not merely in fear of the great British power is, I venture to submit, absurd. The Chief of Bastar, the biggest of them, had got some idea of what was in it, because of the forest powers, and it took four years to persuade him to sign it. My submission is that, putting it quite simply, you must arrive at one of two conclusions: either that they did not understand it and signed willingly because they did not understand; or, if they did understand, that they could not have signed willingly. That is the position there, and my submission is that the Crown cannot stand upon documents of that kind, signed in that kind of way, as constituting cessions of sovereign rights It may be that the Crown would not seek to do so and that in regard to the majority of the clauses the Crown would say what may be the true explanation: "That was a time of great anxiety, just after the Mutiny, we were engaged in trying to pacify the country; we took these powers not intending them to be permanent, but as temporary powers for the good of the country as a whole." If that were so, then there would be nothing further to say about it here—or very little Regarding them as purely temporary powers at that time whilst the country was being pacified, that would be another matter But I do not think the Crown can say that, because they have relied upon these fealty bonds since and they rely upon them I believe to-day. My respectful submission is that they are wrong upon their face Take, for instance, Clause IV, which provides for a periodical revision of tribute Well, if there is one thing in constitutional law, in any form of law, even international law, it is that a tribute once agreed upon is a permanent thing and cannot be altered from time to time at the will of the stronger party. And you will find that particular wrong repeated in various forms in a good many of these cases: the Government in terms claiming the right at its own discretion to alter the amount of tribute, just as if it were a mere land settlement that had to be adjusted from time to time.

In regard to Bastar there is an additional point to be made. That is that there was a treaty* made between Nagpur and Bastar in 1819

* Treaty, dated 30th March, 1819 (Aitchison, Vol. I, pages 448 and 449).

under which the Government of Nagpur engaged so far as in its power to protect the territory of Bastar (page 32). That treaty with Nagpur was made during the period that Nagpur was under British administration, from 1818 to 1825 26, and Major Vans Agnew who signed it on behalf of Bastar was the British administrator of the State of Nagpur. You therefore have the British administrator of Nagpur making the treaty with Bastar which says the State of Nagpur engages, as far as in its power, to protect the territory of Bastar and Bastar is one of Group I which came to the British relationship in 1854 on the annexation of Nagpur. Therefore we came into the shoes of Nagpur as regards Bastar, and under all ordinary principles bound by the treaty that Nagpur had made with Bastar to respect its territories How is it consistent with that to make Bastar sign the fealty bond, and, when it refuses in the first instance in January 1866 to do so, to keep on pressure until 1870, till, in the words of the Government report, "finally Bastar was persuaded to sign"? (Aitchison, Vol I, page 391) It was wrong in my submission

Raigarh in Group II is dealt with at page 33 I will not pause to deal with it in detail beyond asking you to look particularly at the Appendices 7 and 8, 8 in particular (page 50) On the 25th May, 1819, this Kabuliyat was executed * "Whereas a settlement in perpetuity of the whole of Raigarh . has been concluded with me, I do voluntarily agree and promise to pay without alleging any pretext, an annual tribute of 30 Gold Mohurs as a mark of my allegiance to the British Government" Now that is the whole obligation of Raigarh vis-a-vis the British Government, except just the paramountcy relationship. Raigarh was the State that helped the British in their fighting with Nagpur in the early part of the century, and was rewarded in that way by a special mark of favour and this informal payment of 30 Gold Mohurs. That is one of the group

Now you will remember yesterday, Sirs, I mentioned that some of these misconceptions about these States in the Central Provinces and Bihar and Orissa were probably due to the use of the word "zemindar" which you have seen On pages 50 and 51 there is a very interesting note about the use of the word "zemindar" and the confusions that have arisen out of it (Appendix "Q")

I would like, if I may, to ask you to be so good as to read that note carefully and accept my submission, I hope, that it is not safe to draw conclusions from the fact that the word "Zemindar" has been used to describe one of these Chiefs, that he is what we know to-day as a "Zemindar." I will not pause now

Finally In 1925 the States of the Central Provinces sent a joint memorial to the then Viceroy, Lord Reading The Government said in reply† "The request for a general revision of Sanads cannot be entertained by the Government of India It is, however, open to any Ruling Chief to put forward any particular proposal for consideration on its merits" I venture to submit, Sir, that that is the old policy

* Kuboolyut executed by Rajah Joojar Sing of Raigurh, dated 25th May, 1819 (Aitchison, Vol I, page 442)

† Letter No 1113—B/26, dated 20th December, 1926, from Political Agent, Central Provinces, Feudatory States, Raipur, to Raja Bahadur Jawahir Singh, Ruling Chief, Sarangarh State

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of isolation surviving after it had been given up, and that there was no reason at all for refusing to deal with what was a common grievance when put forward by common action in a respectful and very reasonable memorial. The memorial is there, Sir, on page 57. I will not pause, of course, now to read it in detail, but I do submit most earnestly that that is an extraordinarily moderate and reasonable memorial which ought not to have been turned down in that way. I cannot help asking the sympathetic attention of the Committee to the reaction upon the minds of these Princes of this kind of treatment It is so essentially unreasonable. Look at the answer,* Sir (page 60). The answer, I submit, is typical, and it is exactly the kind of answer which should not be sent. It is time this kind of thing ceased It is enough to distress all loyal Chiefs and to alienate some of them. The dictatorial, autocratic tone of the letter has no justification, and, I venture to submit, is the worst possible policy.

It begins in the formal way. "The memorial has been submitted to His Excellency the Viceroy, and I am now to communicate the following orders of the Government of India in this connection. 2 The requests contained in the memorial may be summarised as follows:—(i) That the Ruling Chiefs may be placed in direct political relations with the Government of India; (ii) that their Sanads and engagements may be revised; (iii) that questions of ceremonial and precedence may be fully considered and settled; (iv) that before a Ruler is deprived of his powers two other Ruling Chiefs should be consulted; and (v) that the principles of Regency administration should be definitely recognised 3 As regards (i)"—that is, direct relations—"I am directed to say that the position of the Central Provinces States was very fully considered by the Government of India in 1920 21, in connection with that of the States in Bihar and Orissa (from certain of whom memorials on the subject have been received) and it was considered that the only feasible solution was to bring them into closer touch with the heads of the Provinces. In the case of the Central Provinces States this has so far been done in that the Political Agent, Chhattisgarh Feudatory States, has been placed directly under the Governor, and the control of the Makrai State has also been transferred to the Political Agent In addressing the Secretary of State in respect of the States in Bihar and Orissa the Government of India observed":—Now, this is the passage that I desire to criticise adversely "The specific recommendations in the report on Indian Constitutional Reforms applied to those States which possess full powers of administration There are no States of this description in Orissa Under the advisory clause in their Sanads, these Chiefs have practically no independent powers of internal administration, and their powers of criminal jurisdiction are limited in various degrees None of them have reached a stage of development and importance qualifying them for admission as members of the Chamber of Princes. They in no way fulfil the two tests laid down by the conference of Princes for States to whom the principle of direct relations was to be applied" That is full powers and salute above 9 guns, as you remember "These considerations apply equally to the Central

* Letter No. 1143-B/26, dated 20th December, 1926, from Political Agent, Central Provinces, Feudatory States, Raipur, to Raja Bahadur Jawahir Singh, Ruling Chief, Sarangarh State.

Provinces Chiefs, and the Government of India do not consider that there are sufficient grounds for revising the decision that they should remain in political relations with the local Government." Now, just think what that means. The memorial is: "We want our Sanads revised because we contend we are full-powered States and you have no right to put them upon us." The answer is: "There are no States of this description in the Central Provinces." Simply a flat denial and nothing more. "You have no independent powers of internal administration because of your Sanads." And it is the Sanads of which they are complaining! It goes on: "4. As regards (ii)"—that is the Sanads—"the request for a general revision of Sanads cannot be entertained by the Government of India. It is, however, open to any Ruling Chief to put forward any particular proposal for consideration on its merits. 5. As regards (iii), questions of precedence and ceremonial, I am to observe that the precedence of the Central Provinces Chiefs and the procedure for certain ceremonial occasions have already been laid down. If any point arises on which there is no order, the Ruling Chief concerned can refer it to the Political Agent who will obtain the orders of the Governor-in-Council thereon." The whole point was to get a general ruling because it is so invidious for a single Chief on a particular occasion to have to write and say "I have not been treated properly." The essence of the position in these ceremonial matters is that they shall be dealt with in consultation so as to avoid raising the invidious question of a demand by a particular Chief which may be misconstrued into egotism on his part. "6. As regards (iv), I am directed to point out that there is no foundation for the complaint that in the past Chiefs have been deprived of their powers without being given an opportunity to meet specific charges and without a hearing." But this was in 1925 and it was only in 1920 that the new Rules were laid down by Government that there should be a Commission of Inquiry. Then paragraph 8. "I am to add that experience has shown that the submission of joint memorials is not a convenient method of representing the wishes of the signatories, and that they will not be taken into consideration in future." Well, I venture to submit that that is nothing more than a flat negative communicating Government orders. If you apply the hypothesis that I asked the Committee to apply just now of assuming that the legal Opinion that we have put in is right and that the view entertained by these Princes, that they had sovereign powers and that the Sanads took them away wrongfully, that they are entitled to be in direct relations with the Paramount Power and that the other matters which they bring forward were brought forward seriously, not rebelliously, to the Paramount Power, not repudiating the power of the Paramount Power in any way at all, but courteously and reasonably as a common grievance of all of them—I venture to submit that to treat it in that way was not right. The relevance of it, of course, is that these principles affect the whole relationship of the States with the Crown in every aspect.

Now, Sir, I have finished with that. I shall have to come back to the Central Provinces States in connection with railways because there is a passage here about railways that ought not to be here at all, it ought to be at a later stage of the print. I am sure you will be

glad to pass from that particular branch of the evidence, but I do very respectfully ask you to bear in mind my submission that it is the principles underlying all these cases that are important and not the particular size of the particular State or the particular money amount in issue.

I come now, Sir, to the group of cases where Government have applied general rules of practice, imposing them upon a State in a way inconsistent with the sovereignty of that State. When I say "general rules" the rules may be in the form of actual printed regulations or they may be merely a practice, the same principle is raised in every case, that the Government has no right to trespass upon the internal sovereignty of a State and attempt to regulate its internal conduct.

The first is the case of the Mail Robbery Rules Here we have three very important States, Bhopal, Cutch and Gwalior, and they are all complaining of the same thing Bhopal's is a comparatively old case, but it is a type of complaint of which there are instances running down to quite recent times I considered how far it was right to deal with old cases and I came to the conclusion what the criterion must be· Is it the kind of thing that is going on to-day, that is relevant to the present Inquiry, or is it not? Does it affect present-day conditions or does it not? Where they did, then it seemed to me that the fact that it was of an old date was no reason to exclude it. And, further, I had this in mind, that had we limited ourselves only to recent instances, we should have run the risk of being told "Oh! this does not represent any permanent continuous view of the Government" I felt that we had to cover a considerable period of time in order to show that the Government are acting on a continuous attitude. Now, Sir (page 11), Bhopal The points are (1) that there is no right in the Crown, for instance, to order a State to make payment under these Rules, and (2) the Government ought not to take the profits and ask the State to bear the losses You will find from one of the other cases that whilst they tell the ordinary person posting a parcel that the Post Office will not be responsible if it contains valuables unless it is insured, the fact that a parcel contains valuables is not regarded as any excuse why the State should not pay their value to the Government, and the fact that a parcel is insured and that the Government has received the insurance premium is no reason why the Government should not keep in its pocket both the insurance premium and the full value of the article stolen, received from the State, reserving to itself an entire discretion as to the extent to which it will make compensation except in insurance cases to the consignor. I put it in that blunt way because certain aspects of these matters seem to the States unreasonable, and I, therefore, want to draw attention to those aspects that strike the States as unreasonable as well as to the purely legal question as to whether the Government have the right to pass any such rules at all.

On the 3rd August, 1866, the Political Agent in Bhopal sent to Her Highness the Ruler of Bhopal a Kharita from the A G.G. to Her Highness, dated 27th July, 1866, in which the Agent to the Governor-General informed Her Highness that His Excellency the Governor-General in Council had issued orders regarding the security and protection of Government mails in the State, their responsibility for loss due to robbery and the award of pension to those killed or disabled

while carrying or guarding the mails. The A.G.G.'s letter was accompanied by a Urdu translation of the above order.

The Order of His Excellency in Council is in the form of a Government Resolution, and is dated 8th July, 1866 After laying down the general principle that "every State is responsible for the safe passage of Government Posts and Parcels Mails through its territories" it proceeds to lay down rules—vague, indefinite, and clumsy—regarding increase and improvement of police forces in States, the realisation of indemnity from the Parganas to which crimes might be traced, the estimation of losses, the indemnification in cases of death or hurt of persons on duty. Her Highness in her reply to the A.G.G, dated 2nd January, 1867, criticised the terms of the Resolution, and pointed out the difficulties that would arise in the operation of the rules. She stated that police arrangements in her State were satisfactory, and were being improved, that robbery took place in every country in the world, that all that any Government could do was to try and make their occurrence as rare as possible Her Highness repudiated the liability of the State for any robberies happening in spite of police arrangements that the State thought adequate and maintained In his reply the A.G G. explained the meanings of some of the clauses of the Resolution, and informed her that the effectiveness of the police arrangements in force in Bhopal to guard the mail was not questioned, that the Resolution applied to all the States and that it was not possible to exempt Bhopal alone from its application, or even to amend the rules for its sake

The rules appear on page 12 The Government Order is in the Political Agent's letter, dated 3rd August, 1866, "Orders issued by His Excellency." The rules are these. "Resolution His Excellency the Governor-General in Council, after considering the opinions of various officials whose opinions were invited, lays down the following rules to be generally followed· (1) Every State is responsible for the safe passage of Government posts and parcels mails through its territories (2) If posts or parcels mail is robbed in a State owing to there being insufficient arrangements to protect it on the public roads, the State where the robbery occurs shall have to increase the number of guards accompanying the mail, and of men at the police stations on the roads, otherwise the British Government will do so on behalf of the State (3) The State must obtain indemnity to the extent of the value of the robbed mail from the Parganas where the crime has been traced and located (4) In estimating the value of the mail robbed, no exemption will be allowed for the value of gold, silver, jewellery, or other valuables forming part of the mail (5) Whenever any person is disabled for life or killed while carrying or protecting the mail, claim for the award of pension, etc, shall lie against the State responsible for the occurrence" My broad criticism of these rules is that it was legislation prepared to control the State, and that it left the Government, in effect, almost arbiter as to the amount the State would have to pay. The answer of Her Highness* (page 13) is a very reasonable answer. "In the first place, as regards the responsibility of States to maintain police posts for protecting Government post and parcel mails passing

* Kharita from Her Highness the Nawab Sikandar Begum to the Agent to the Governor-General in Central India, dated 2nd January, 1867.

through the States, I have to say that police posts are already maintained in Bhopal State, and the officers in charge of the posts have been enjoined to watch the roads in the best possible manner. They are complying with these orders, and are duly punished under the State rules for any negligence or fault on their part. The State of Bhopal, or other Native States, cannot be blamed for negligent administration or reluctance in awarding suitable punishment, for even in British India where the administration is so good the occurrences are not unknown There are good, bad and all kinds of people inhabiting God's earth, and such crime could become extinct only by the extirpation of men of evil persuasion The wisdom and the efficiency of an administration lies in making such incidents rare. If there is a law which has removed the possibility of these occurrences and has made the passage of British mails throughout the land perfectly safe, I should be thankful if you would supply me with a copy of it in order that I may enforce it in my State"

As we might expect from the grandson of Her Highness, she was an old lady with a sense of humour. With reference to the next paragraph "It is not clear what arrangements will be considered sufficient, what increase in the number of guard accompanying the mail is desired or the manner in which the armed guard is supposed to go with the mails These points should be made clear before I could give you my reply."

Then about the indemnity. "My friend from 'Parcel' I understand goods sent by a merchant, etc , by post. I should like to know if the loss of the parcel is to be indemnified on the basis of the merchant's statement. How the value of the letters is to be determined should also be fully explained."

"The fourth paragraph dispenses with the exemption from payment of value of gold, silver, jewellery, or other valuables In this connection I would invite a reference to the translation of the circular letter No 437 from the Under-Secretary to the Government of India to the Agent to the Governor in Central India, dated the 23rd November, 1859, received by me at Shikohabad with the Political Agent's letter dated the 13th June, 1863 In this the Postmasters are warned not to despatch valuables like Gold Mohars and jewellery, etc, by post, as His Excellency the Governor-General was pleased to notify that in case of loss the people in Rajasthan would not be held responsible In my Yaddasht, dated the 22nd July, 1863, I had asked the Political Agent whether in respect to mail consignments robbed in British India compensation for the value was paid to the owners or not. In his Yaddasht, dated 22nd August, 1863, he replied that excepting gold, silver, cash and jewellery, etc., which were not allowed to be sent by post, the British Government always paid compensation for the despoiled property. I think the arrangement according to the circular dated 23rd November, 1859, and the letters mentioned above in regard to gold, silver and jewellery, etc., should still continue, because the provision in the extract dated the 18th July, 1866, dispensing with this exemption is likely to lead to many and serious difficulties The question arises whether the British Government will compensate the loss on a reciprocal basis? Also what evidence would be considered sufficient . . " And then as regards the life and personal injuries compensation, "My friend, the right to claim

pension for disability or loss of life while carrying or guarding the mails should, with the inclusion of State servants employed for this purpose, lie against the party which gets the postal receipts I have, therefore in my Yaddasht dated 16th December, 1866, fully explained the matter to the Political Agent in Bhopal, and you will know my opinion from a perusal of the same" That is all there is to be said about Bhopal. A very pertinent letter.

Then the next one, Sir is Cutch (page 76) Broadly speaking the point about the Cutch State is that they have been so successful in protecting the mails that there have been hardly any robberies at all They have been very efficient, and I think it was in consequence of the efficiency of Cutch in protecting the mails, or the good record that Cutch had, that in the 1885 rules the clause was added to the effect that where there has never been a loss before in a State that should be no *prima facie* evidence of efficiency A robbery took place in 1904, a report was called for, and the Cutch State said they had no right to ask for a report interfering in local administration, but sent one Then followed a demand by the Government to pay 67 rupees. Cutch demurred saying it was interference, and neither sent the money nor a reply for some time, and the Political Agent became indignant and then wrote* (Exhibit 6), "I need hardly point out that your continued disregard of repeated references on the subject from this Agency is tantamount to deliberate discourtesy, and unless a reply of some sort is received before the end of this month, I shall reluctantly be constrained to report the matter to Government" Then the Dewan replied (11th November, 1906) I will not pause with the details, but the gist of it is this, that they were doing everything they possibly could, and that it was not reasonable to make a State pay when the State was doing everything it possibly could They say "This State has hitherto afforded every assistance to the Postal Authorities and allowed the expansion of the system of Post Offices in Cutch The Darbar have permitted Post Offices to be opened at remote and out of the way places, and have allowed their School Masters to undertake postal work in addition to their own duties It may be added that the Darbar derive no pecuniary benefit from the operations of the Postal Department Under all the circumstances mentioned above, and in view of the footing on which the relations of this State with the British Government stand, His Highness trusts that Government will be pleased to reconsider the matter and that it will appear right to them not to ask the Darbar to pay the value of the stolen property" That is the gist of that letter A year later they are again pressing for it, and the pressure of the Governor is introduced (page 81) † "His Excellency the Governor in Council desires that the Cutch Darbar will take immediate steps to settle the claim I request you will therefore be good enough to send me the amount as soon as possible" That pressure from Government to force a State to do that which it is not under legal liability to do because the Government rules are *ultra vires*, I submit is undesirable

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* Letter No 1303, dated 15th October, 1906, from Political Agent, Cutch, to the Dewan of Cutch

† Letter No 1573, dated 23rd November, 1907, from Political Agent, Cutch, to the Dewan of Cutch

Then finally the payment was made under protest* (Exhibit 10).

Then in 1916 there was another mail robbery reported (page 76), and the Darbar were asked to inquire and report. While the investigations were proceeding, the Political Agent intimated (Letter No. 930 dated 15th June, 1916, to the Dewan of Cutch) that the Post Office had been put to a loss of Rs.2,075 and "as the Cutch State, within whose jurisdiction the mail robbery took place, is responsible for the loss caused to the Post Office, I request you will be good enough to "remit the amount to me for payment to the Postal authorities." And if I remember rightly (I am not sure it was that case), it proved that subjects of another State had come over the border into Cutch and that Cutch subjects had had nothing whatever to do with it. Still, they were pressed to pay.

Then you get the summary of the reply (Letter No. 682, dated 17th September, 1917) on page 77, pointing out: (1) That the State Police is efficient. (2) That the inquiries in the particular case had been set on foot and a reward for the detection of the crime offered. (3) That offences of mail robbery are of rare occurrence in the State (4) The Treaty relations of the Darbar with the British Government place them above such demands But His Excellency the Governor in Council continued to press and thereupon the Maharao addressed a personal letter (dated 30th September, 1918) to the Governor (page 86) It is a long letter; I am not to pause to read the whole of it, but I venture to submit that it is a very reasonable letter. It is a personal letter from His Highness the Maharao. The first page or two is mere recapitulation, but there are three paragraphs I would like to read. Paragraph 10 is: "At about this time"—that is about 1879—"the British Government notified the abolition of the Insurance system in Kathiawar altogether and in Cutch during certain months of the year. The Dewan thereupon addressed the British Postal Authorities to abolish the Insurance system in Cutch altogether, as was done in the case of Kathiawar. (11) The reply of the Postmaster-General, 17th June, 1879, to the above representation is very instructive. He said that in Kathiawar robberies were grave and detection difficult, but that in Cutch there was only one unimportant postal robbery, and that was promply detected and punished. He further observed that the absence of mail robberies showed the efficiency of the Cutch police so different from the very unsatisfactory state of things in Kathiawar. He accordingly thought that he was unable to support the Darbar's suggestion to abolish the Insurance system altogether. (12) On the 29th July, 1885, the Government of India issued a fresh resolution about mail robberies in the Indian States, superseding that of 1866 referred to above. This resolution said that in determining liability due regard must be paid to efficiency of State police and vigilance displayed by Darbar to bring offenders to justice' You notice there what the Postmaster-General said: "That the absence of mail robberies showed the efficiency of the Cutch police." Those rules are given in the Gwalior case (page 195). Do you mind looking at them for a moment? There is very little difference between the Rules themselves and the Rules of 1866 in favour of the States; but there are certain differences

* Letter No 232, dated 21st April, 1908, from Dewan of Cutch to the Political Agent, Cutch.

and certain facts I want to draw attention to at the top of page 196*: "(3) Since the promulgation of these Rules"—those are the 1866 Rules—"the matters provided for by them have been considered by the Government of India on several occasions and in various shapes It appears that full effect cannot properly be given in all cases to the Rules as they stand; while Her Majesty's Secretary of State, under whose notice the subject has come, is of opinion that due regard should be paid to the efficiency of the State Police, and to the vigilance displayed by the Darbar officials in endeavouring to bring offenders to justice. These views will now be adopted by modifying the existing Rules, which, moreover, need revision in certain points of detail (4) Accordingly the Governor-General in Council is pleased, after consulting Local Governments and Administrations"—and none of the Princes, I interpose—"to substitute the following Rules regarding Mail robberies in Native States for those prescribed in the Foreign Department No. 1035 dated the 18th July, 1866, (I) Every Native State is responsible for the secure passage through its territory of the Imperial mail or parcel post, and every Native State in the territory of which the Imperial mail or parcel post is robbed is *prima facie* liable (1) to pay to the British Government the full value of whatever is taken or destroyed by the robbers; and (2) to pay such compensation as the British Government requires"—they are made the judges—"to carriers of the mail, or other persons, or to their families, in the event of the carrier or other persons being injured or killed in connection with the robbery" Then "Explanations (a) The term 'mail' includes" etc, etc. Then "(b) No exemption shall be allowed in estimating the above mentioned payment or compensation on account of bullion, jewellery, or other articles of great intrinsic value" That is to say, if a million pounds of diamonds are sent in an unregistered and uninsured packet and are stolen, the State has to pay whatever figure the British Government puts upon the diamonds "(III) A Native State to whom the *prima facie* liability defined above attaches may plead in extenuation thereof (1) That its police arrangements are efficient, especially with regard to the protection of the mail routes passing through its territories, and that it has displayed zeal and energy in bringing or attempting to bring the robbers to justice (2) That the robbery was committed, without complicity on the part of any of its own subjects or contributory negligence on the part of its own Local Authorities, by a servant of the British Post Office. Explanation the mere infrequency of mail robberies shall not alone be regarded as extenuating circumstances, or as evidence of efficiency" That is almost exact with the others Then the last one, (IV), is "The compensation paid by Native States in discharge of the liability defined in Clause I (1) and the balance of existing 'Mail Robbery Funds' shall be credited to the Miscellaneous Revenue of the Post Office of India, and the Director-General of the Post Office may, at his discretion, award to consignors or consignees the whole or part of compensation payments to make good loss caused by the robbery of articles which are neither insured nor of great intrinsic value." So that if they are of great intrinsic value and uninsured the Government gets the whole intrinsic value, but it does not pay anything over to the consignor My submission is that His Highness the Maharao's objection to these rules was well-founded.

* Extract from Notification of 1885

You will find the facts about the efficiency of his State administration in paragraphs 17 to 23 of personal letter to Governor dated 30th September, 1918. He approaches the whole question on broad lines, and he says this in paragraph 24: "Moreover in the present discussion"—this affects the economic relations of course—"one very important feature of the situation appears not to have been taken into consideration altogether. The system of the postal insurance, though devised for the public benefit and convenience, is worked on business principles, and the British Government presumably make a large profit on this branch of the postal department. The nett amount received by the British Government as income derived in different ways from the postal department in Cutch and in the shape of insurance charges on insured articles coming into Cutch and going out of Cutch territory must indeed be very considerable during the last 38 years, and the Darbar does not share in this revenue It would appear scarcely fair that the British Government, who on the one hand derive all this revenue, should call upon the Darbar to pay the losses which as insurers they are bound to recoup. I submit that the observations of Colonel Reeves as Political Agent and President of the Council of Regency in the year 1879 lay down the correct principle, namely, that the British Government who take all the insurance money should, as a rule, be liable in all cases of loss of insured parcels. The present attitude of Government in insisting upon the payment by the Darbar of such loss is, I submit, inequitable and is the source of unnecessary humiliation and annoyance to the Darbar. (25) I beg to submit that the present situation is felt to be so unsatisfactory that the Darbar has under serious consideration whether the British Government should not be requested to put an end to the present postal arrangements and allow the Darbar to have a complete postal system of its own, working in harmony and co-operation with the British-Indian postal system. (26) In conclusion I beg for the present to request your Excellency to extend to the Darbar the consideration of not insisting upon the payment of Rs. 2075 as compensation for the mail robbery under reference . . . I trust that your Excellency will be pleased in view of the facts set forth above to reconsider the opinion expressed by you, but should your Excellency be unable to do so, I beg to request that this representation may kindly be forwarded to His Majesty's Secretary of State for India for his favourable consideration." The answer is*: "With reference to your letter . . . in the matter of the refund of the sum lost in the mail robbery, which occurred in Cutch on the 23rd February, 1916, I am directed to inform Cutch Darbar that Government see no reason to reconsider the decision to which they have already arrived. (2) As regards the request made by His Highness that the representation should be forwarded to His Majesty's Secretary of State for India, I am directed to state that Government have withheld the representation under Rule 6 (5) of the Political Department's Memorial Rules appended to Government Resolution No. 5717, dated 27th September. 1915." Unfortunately I have no earlier Memorial Rules than 1916 and I cannot identify that Rule, but I suppose it is the Discretion Rule. My submission is that the representation ought to have been forwarded, whether it was a time-barred rule or a discretion rule. I dare say it was the time-barred rule Then: "I am further desired to point out

* *Letter No. R/6, dated 19th December, 1918, from Political Agent, Cutch.*

that Clause III (I) of Rule 4 of the Mail Robbery Rules contained in the Resolution of the Government of India in the Foreign Department, No. 2495, I, dated 29th July, 1885, provides that in order to establish a case for exemption from payment, it is necessary to show that zeal and energy have been displayed in bringing or attempting to bring the offenders to justice; that the offence occurred on the 23rd February, 1916, and that, in spite of numerous reminders, the Darbar continued to ignore the claim of the postal department and that His Excellency the Governor's letter of the 3rd December, 1917, remained unanswered for over nine months The explanation to Clause III of Rule 4 states that infrequency of mail robberies cannot be accepted as evidence of police efficiency." I should have humbly submitted the fact that the Maharao thought the Government's attitude so unreasonable that he did not answer for nine months was no evidence that his police were inefficient. But there it is. They refused in 1919 to send the memorial forward because he had been guilty of delay in forwarding the letters.

The next case is that of Gwalior (page 189). It is the same sort of case. It is pointed out that the Rules of 1866 cause great hardships on the State and there is a reference to the view of the Secretary of State which was quoted in the Cutch case. That view was embodied in the Notification of 1885, but—and this is the important thing—the working of the Rules under this Notification—that is 1885—made no difference, as would be illustrated best by a few typical cases That is to say, the Post Office continued to request payment automatically, quite regardless of the question as to whether there was any evidence of inefficiency on the part of the State Police or not, or whether the State proved that the State Police were efficient A mail robbery was committed on the 11th April, 1898, between Nagar, a Jagir, and Partabpura, a village in Gwalior Territory The Superintendent of Sehore (a British Official) who inspected the scene of occurrence thought the robbery to have been committed in the Gwalior Territory, while the Darbar officials maintained that it was not committed on the Gwalior side of the boundary. The Agent at Bhopal, however, decided that the robbery was committed on the actual boundary and held* that the responsibility for making good the plundered contents must be equally shared between the Darbar and the Jagirdar

Now pause for a moment What authority had the Agent to give any decision whatever? The Durbar urged in reply† that from inquiries made it had been ascertained beyond doubt that the robbery in question had taken place in Nagar. The reply‡ received from the Resident is interesting He says, "that as a British Officer, the Political Agent of Bhopal, has reported that he, after going through the papers and hearing what both parties had to urge, decided that the robbery in question was committed on the actual boundary, there remains nothing to be done but to carry out the Agent to the Governor-General's orders, viz, that Gwalior and the Jagirdar should each pay half, and I have therefore the honour to request that the money asked for . . may be remitted with the least possible delay" Now that is not right.

* Letter No 2000, dated 2nd June, 1888, to the Resident at Gwalior
† Letter No 815D, dated 11th August, 1888, to the Resident at Gwalior
‡ Letter No 67a/1218, dated 6th September, 1888, from the Resident at Gwalior.

A mail robbery was committed at Jamalkhal. The Durbar were asked to pay Rs. 350, half the amount claimed by the Post Office, the other half having been realised from the Tonk Durbar. The Durbar represented that as the plunder had been committed by the subjects of the Tonk State and as five of them had confessed the crime, the Gwalior Durbar could not be held liable for the amount claimed. The Resident's reply (Letter No. 156/79 dated 9th February, 1894) is: "There seems to be no escape from the fact that the robbery took place in Gwalior Territory, and, although the robbers may have been and indeed were, I believe, Tonk subjects, this does not exempt the Durbar from the responsibility of protecting life and property within their own jurisdiction It would be better, therefore, for the Durbar to pay the moiety of the compensation demanded."

In 1914 the Durbar had again to compensate by payment of Rs. 1,800 under protest, the loss occasioned by the plunder of the mail near Agar The position thus became more and more galling to the Durbar, but to make matters doubly sure, they established 25 new Police Posts along the Imperial Mail Routes and sent a statement of the new establishments to the Resident along with a representation in 1924 (No. 379 dated 23rd July, 1924, to the Resident), wherein they felt compelled to urge an outright repeal of the Notification of 1885, or, at least, of certain very important points I would like you, if you would, just to glance at the letter of the Durbar (page 204). "3 For years past the Durbar have demurred to every individual claim for compensation on the ground of the increasing efficiency of their police administration. But in spite of the commendations received from time to time from the Government of India of the efforts which the Darbar have made towards the perfection of their protective arrangements, the Government of India have not hitherto seen their way to modify or relax rules which were brought into force at a time when the police arrangements in a great majority of States were notoriously inefficient. The result is that these rules are even to-day applied to all States alike and to every case of highway robbery without regard to the general efficiency of the administration of the State concerned or to the merits of the case. Thus, the moment a highway robbery of Imperial mails is reported, the Superintendent of the British post sends in his demand for compensation as a matter of mere routine, i.e., before the merits of the case have been ascertained and without any reference whatever to higher authority 4. This is a position so galling to the Darbar and so inconsistent with the Imperial Government's present attitude towards the Indian States in general and Gwalior in particular, that they feel compelled to advocate an outright repeal of the Rules in question If that be not expedient, the Darbar would request the Government of India at any rate to exempt them from the operation of these rules 5. That the Darbar are always willing to strive, by adopting measures of amelioration, to reduce to a minimum the occurrence of highway robberies along mail routes, is evidenced by the fact that they have, after a careful examination of the whole question, recently initiated measures for strengthening their protective arrangements. Enclosed is a map and statement which show the Imperial mail lines lying within the Darbar's territories, as well as the arrangements provided for the safety of the mails. These arrangements are, as will be seen, and the Darbar trust, recognised more than reasonably adequate for the object

desired. 6. The Darbar for their part feel confident that they have done all that is necessary, if not, indeed, all that was in their power to do, in the required direction. For, after all, it is only the maintenance of reasonable protective arrangements along the mail routes that they can guarantee. They could not, perhaps, in all fairness be expected to do more, for, indeed, there is no administration which can guarantee absolute immunity from crime, particularly a crime of which recrudescence is in the main rather dependent on seasonal conditions 7. I am, therefore, to request that the accompanying papers may kindly be forwarded to the Director-General of Posts and Telegraphs and the assurance obtained that the arrangements made by the Darbar for the protection of Imperial mails are reasonably ample, that robberies occurring in spite of these arrangements can only be regarded as in the nature of unavoidable accidents, and that the Darbar will not in consequence be liable for the payment of any compensation in future "

Now would you mind looking back for a moment at the Statement of Imperial Mail Lines traversing Gwalior territory You find there details about the Police Stations and the patrols along all these roads in great detail That is only relevant of course to the answer,* a long letter of which I propose to read a part (page 205): "3 As regards Imperial Postal lines passing through Gwalior territory, the Government of India are of opinion that there is, of course, no doubt that the Mail robbery rules do apply, and it is not possible to make an exception in favour of the Gwalior State, or any other State so far as applicability is concerned. The Durbar exercise full jurisdiction over these routes, and the Government of India must retain the necessary authorities to make recoveries when losses are sustained which might have been avoided, if the Darbar's servants, over whom the Government of India have no control, had exercised that jurisdiction with all reasonable efficiency and precaution. It is impossible to absolve any Darbar of all responsibility in the matter (and the unconditional exception of a Darbar from the operation of the rules could have no other result) merely because the local standard of police and general administration is high, or because the police arrangements for the protection of the routes concerned appear to be beyond criticism The human factor cannot be left out of account There may be individual cases of dereliction of duty, or the whole standard may decline at some future date for reasons which cannot be foreseen now Also, the admission of any such principle would lead to deplorable rivalry and jealousy, and it would be quite impossible for the Government of India to arrive at satisfactory conclusions as to what States were or were not eligible for the privilege of exemption 4 The Government of India have further remarked that it appears from paragraph 3 of the Darbar's letter that the main reason which has led to the Darbar's representation is that they consider that the rules, as they stand, are not sympathetically worked and interpreted The Government of India agree that peremptory demands for cash payments should not be made 'as a matter of routine' whenever a robbery occurs, and they have accordingly issued instructions which will, it is hoped, remove any further grounds of complaint on this score " They do not touch the real point which is

* Letter No 835G, dated 20th April, 1925, from the Resident to the Political Member, Gwalior Durbar.

that where the State is reasonably efficient there ought to be no liability attaching at all, and that to-day all of these States submit that there is no power to enable such rules to be applied at all; they ought not to be made, they ought not to be forced on the States, and our submission is that the Government of India is not entitled to make them at all. The postal arrangements within the States are a subject of great general importance to the whole of India; of course, the States recognise to the full that intercommunication for postal purposes affects not only the territory through which the communication passes, but the territory outside and beyond at each end, and they are perfectly willing to make reasonable arrangements; but this is not reasonable. What they say is: "We have the right to withhold our consent to these things, and we demand that that right shall be recognised. As soon as that is recognised, nobody will find any person in the world more reasonable than we are prepared to be." That is the end of that subject.

The next case is one I can take very shortly It is again under this general heading of the denial of internal sovereignty through the enforcement or the attempts to enforce regular rules or practices dictated by the Government of India The case is that of the system of rules of procedure in connection with famine relief. This is another Gwalior case (page 111). In regard to it Gwalior recognises, and the Standing Committee recognise, that there is no complaint at all on the subject-matter upon which the Gwalior State was approached. They were approached very properly in regard to information in connection with famine relief and they answered with perfect courtesy. But what they do complain about is that they should be made to do things, or pressure should be brought upon them to make them do things, and particularly collecting information much of which they regard as not of any statistical value, having regard to the conditions under which it can be collected and the purpose to which it can be put They are quite willing to co-operate on any reasonable scheme. Famine relief is a matter that recognises no boundaries, the human need is there on both sides of the boundary, and it is obvious there should be co-operation and consultation between the State and the British Government But here you find attempts to put upon them the British system in a way that they resent as an interference

Chairman: If I may say so, this was after the famine of 1899, was not it, when the necessity was very obvious and very great because most of the famine administrations completely broke down?

Sir Leslie Scott: No The case which I am explaining begins much earlier. The Famine Commission was appointed in 1878 In connection with their enquiry the Commissioners required certain information, they asked for it and the Durbar at once undertook to get it In 1883, five years later, a copy of the English famine regulations was handed to the Durbar for the opinion of the Durbar. In response they sent an account of their own arrangements for famine relief during the two famine years of 1868 and 1877. They did not accept the English regulations in any sense They merely sent a copy back of their own: it was an interchange of information. Five years later, in 1888, the Resident forwarded to the Durbar a copy of the translation of the famine code. In the forwarding letter (No. 624/1134, dated 14th August, 1888) it was said the code had been prepared for

the assistance of the Native States in times of distress and as a general guide to the principles of famine administration. But the next communication addressed to the Durbar in 1891 (No. 3009/995, dated 23rd July, 1891) during the minority administration revealed that what had so far been commended to the Durbar's notice as friendly suggestion had in reality been intended as a means and instrument of control. The Resident, besides desiring the Durbar to furnish weekly reports—you notice "weekly reports"—for the information of the Government of India concerning agricultural prospects and other allied matters, informed them that in the event of scarcity arising the Government of India would entirely hold the administration of the State responsible to adopt measures for averting the calamity. He added "I would further draw the attention of the Council to the provisions of the Famine Code of Native States which was drawn up by the Government of India and accepted by His Highness—*vide* correspondence ending with Kaifiat from the Gwalior Yakie No. 2039, dated 28th October, 1883." That is the correspondence referred to above where there was no acceptance at all, they merely sent back a copy of their own regulations

Chairman: In the old days the Indian States emptied their population on to British India in famine time. That was the reason why the necessity for the Rules became greater

Sir Leslie Scott The Gwalior State, when sending this in, informed me that they welcomed suggestions of that kind and they realised to the full the necessity of common action to a considerable extent It is the way in which the thing is done, it is the dictating that they object to I am inclined to leave it at that, except to deal with the next incident. In 1897—two years before the famine of 1899—the Resident of Gwalior once again asserted (Letter No 600, dated 1st February, 1897) that in 1884 the Durbar had expressed their willingness to adopt the Government of India's Famine Code. That is the kind of thing that the States resent so much, that answers given by them in the past are twisted to another purpose from what was intended at the time There had been no acceptance of any kind or sort, and now the Resident is trying to put it upon the Durbar by saying, "You were willing before and you must take it now," and he puts a series of questions, and so on Then he goes on (Letter No 4370, dated 29th August, 1898) to the question of drawing up a programme of roads, giving a number of details Then in 1908 (Letter No. 1698, dated 18th March, 1908) a monthly report and a detailed weekly report, besides the weekly telegraphic report were required to be submitted so long as the Famine Relief measures were in progress What they pointed out was that those reports asked for in the way they were asked for never reached, could not possibly reach, the Government of India until long after the date they were of any value at all, and they lodged their protest and object Then finally you observe the result of it all is after they have protested for a very long time that it is not necessary the Government says (Letter No 5504, dated 24th August, 1909) "I am now desired to inform the Durbar that in view of the efficiency of the administrative arrangements in Gwalior the abstract need not be considered obligatory in future"—and they climb down That is a thing that is very instructive. You will find in many of these cases that where a State

does take up a firm line it very often in the end gets its way. That means merely that the State that has the courage to take up a firm line and is strong enough to do it succeeds I have taken it very shortly on purpose. The Exhibits speak for themselves. We will come to that question of the terms in the next one If I may quote from an "unheard" voice "It is the bullying method that they object to" You see, the weak State gives way and the strong man survives. That is not the right system.

The next one is another Gwalior case (page 124). This is the simple question of the demand for statistics. Well, the Standing Committee are prepared to admit that statistics have their value, but they desire to represent humbly to the Committee that some statistics are better than others, and that they were asked for an intolerable quantity of statistics and much pressure was put upon them. The subject of statistics of general value to the whole of India is obviously a subject of general interest to every governing authority in India, and therefore to all the States and to British India together, and their submission is that that is essentially a subject upon which there ought to be agreed action, and not action taken by the Government of India in pseudo-consultation, with one State merely pressing its views upon another State and the other State saying "All right, I agree," but action with a representative body of the States It is an illustration on a minor point of the value of having some kind of consultative body of a workable size, and adequate power from the States delegated to it by the States, to make agreements for that sort of thing They want that and they say "It is only in that way that we shall be relieved from this nightmare of continuous interference," to which that particular word we overheard just now is, in their view, applicable I think the best thing to do here is to turn straight to page 127, where you get the list of subjects to which Gwalior, after a long life of much suffering, found itself submitted—fifty-two different types of returns to which finally they said "Well, this is too much" If you look through the list—I will come back to it later—and in the light of that list read paragraph 5 of the Exhibit on the bottom of page 128 (Letter No. 2485D, dated 6th October, 1909, from the Political Secretary, Gwalior, to the Resident): "It may even without cavil be questioned if each return that is supplied is put to any use at all commensurate with the labour spent on it. I may illustrate my meaning by referring to just one instance, namely, the first of the four cotton forecasts. It is due at the headquarters of the Government of India on the 15th August To allow time for compilation, the Central India Agency call for it from the Political Agencies a week or so earlier The Political Agent keeps his own margin and calls for it another week or ten days earlier. The Durbar Secretariat, the Revenue Board, the Sar Sooba, Sooba, Tehsildar, Girdawar down to the Patwari, must each have their margin of time, with the result that on the spot where the village return is prepared it has to be got up long in advance of the sowing season and is, therefore, for purposes of information, as good as a blank sheet of paper. Of what possible use such a return can be to anybody passes comprehension. And yet there is a demand for these returns"

Chairman: The demand for these returns, I may say, is based on the forms which the House of Commons requires annually. That is the,

basis of them, I know. I do not say anything about the way in which they are obtained. A great many of us in India from time to time have tried to relieve ourselves of statistics

Sir Leslie Scott: If you accede to the views which we humbly submit, perhaps you will take the necessary steps to bring them to the notice of the House of Commons?

Chairman: That might follow later!

Sir Leslie Scott: Looking at some of these things in the list, a great many of these returns no doubt are kept by the State for its own purpose voluntarily at its own expense, and naturally. But take that first list, take 15 I do not know how the members of the Committee would keep that diary if they were asked to do it, "Diary of criminal tribes in Central India for the Thaggi and Dacoity Department" Then you see all these—"The cotton crop forecasts," then "Weekly Crop and Weather Report" Now 18, on that second list, "Six-monthly statement showing rates at which labourers are obtainable at Lashkar" Why should the Durbar be compelled to send in a return of that kind?

Chairman Well, the subject of returns has been gone into in every Province in British India with a view to their reduction It has not been found possible to reduce very many However, I note your point

The Maharaja of Patiala May I point out No 11 "Catalogue of Books published from Printing Presses within the State"

Chairman That is wanted by the India Office, I know Your point, Sir Leslie, is that these returns are unnecessarily numerous and that they have been called for in a way that was unnecessarily dictatorial

Sir Leslie Scott: Yes Of course, some of them—take the one at the bottom of page 127—"Nirakhnamas of Morar and Lashkar,"——

Chairman: That is for the Gwalior State Gazette, is it not?

Sir Leslie Scott: —— that was only the arrangement that was made They were all asked for by the Government

The Maharaja of Patiala Gwalior State wrote and said "We publish this in our Gazette and you can take it from that"

Chairman These are price lists They had to compile returns of the whole economic section of the Annual Returns

Sir Leslie Scott: Yes, but I would have you observe, with regard to the Nirakhnamas, there is a cantonment near those places, and the same thing applies to the Nirakhnama that was agreed to be abolished

Chairman: That might have been a less important cantonment or they might have had the same prices I do not think we can go into that

Sir Leslie Scott I quite agree

Secretary That Nirakhnama was required so as to fix the prices for getting stores and grain for the Malwa Bhil Corps stationed at Sirdarpur in the Amjhera District These returns are extremely galling and unpleasant, but I know from experience that each of them is required for a specific purpose of administration.

Sir Leslie Scott I am not going into details there may be very good reasons for wanting to get them It is the manner My submission is that there is no power to compel, and the Government correspondence asking for them should be written in the light of the fact that there is no power to compel It should be asked as a courtesy, that is the first thing, the second thing is, that statistics are so essentially, in the

main, matters for arrangement as regards the type of statistics, that it ought to be done by general arrangement with the States as to what types of statistics should be given in individual cases.

I come to a different subject. It is the denial of the State right to impose its local customs, taxes, duties and tolls upon soldiers, or civil servants, or stores wanted for cantonments, residencies, and the like. It has been a general policy followed by the Government to put forward the contention that it has a right to have all these facilities duty free for the persons in question, to escape tolls and taxes, income tax, personal taxes like that; goods consumed by them to avoid Customs duties; and for goods wanted by soldiers outside the State, in neighbouring cantonments, to be exported duty free, free of export duty. This contention of fiscal immunity from local sovereignty is put forward under various pretexts. Many different excuses are put forward to justify it. Sometimes it is a particular Treaty, which may or may not apply; sometimes it is actual paramountcy; sometimes it is an agreement made *ex gratia* by the State for a time, which, quite frankly, the State is bluffed into continuing It comes up in all sorts of shapes, but the underlying identity is to avoid payment of the local taxes, and it is in that broad aspect that the submission of the Princes —which I am not going to argue now—is that there is no right to any immunity, unless it is granted by some specific treaty or agreement, except, I think that all the States are willing to concede any immunity, not as a matter of right, but as a matter of courtesy and grace to the person of a Resident coming in a diplomatic way to the State. They would give the ordinary immunity of a diplomatic agent, but beyond that they say that it is a matter of treaty.

Now this particular case of Cutch (page 72) was a case in relation to import duties and tolls It is quite a short case.

In 1907 certain articles of furniture of the Imperial Post Office at Anjar were landed at Tuna Port in Cutch. The Postmaster, when asked to pay import duty on the articles imported, said that he would not pay the duty, as the Superintendent of Post Offices, to whom the question was referred, was of the opinion that under the Treaty with the State no duty could be levied by the Darbar on Government stores The Darbar thereupon wrote to the Political Agent (17th October, 1907) to recover the duty from the Postal Department, because such articles required for the Postal Department were not exempted from duty in *any of the Treaties.*

The Political Agent in reply (letter No. 1420 dated 24th October, 1907) stated that the Darbar have never claimed customs duties on Government stores, and added that the fact that Article XXI of the Treaty of 1819 provided that all supplies, even imported by traders for the use of the troops, were to pass free of duties, shows that no such levy on Government stores was contemplated

It is a very good illustration of the type of argument that is put forward The Treaty, of course, of 1819—I will show it to you tomorrow—gave a certain immunity to the troops under certain conditions, but only to the troops who were there; nothing to do with the *Postal Departments* at all.

Not many years had elapsed when in 1913 the Superintendent of Post Offices, Cutch Division, requested the Political Agent (letter No. 6084 dated 20th September, 1913) for an exemption from the payment of tolls while travelling on duty. The Political Agent asked the Darbar

(letter No. 88 dated 24th January, 1914) to issue a general order exempting Government servants from payment of road tolls while travelling on duty and to send him a copy of such orders, adding that if the Darbar had any doubts in the matter he could refer it to the Government The Darbar replied (letter No. 354 dated 24th July, 1914) that the Notification cited by the Superintendent appeared to have been promulgated for the British Districts and did not apply to Indian States. That is so.

The records of the Cutch State showed that the employees of the Postal Department in Cutch had been paying the tolls in question ever since the opening of Government Post Offices in the Cutch State. The Darbar therefore refused to grant general exemption to Postal Authorities from payment of the tolls On this the Political Agent drew their attention to correspondence of 1898 where the Darbar was stated to have shown their willingness to exempt Government stores from payment of tolls. The Political Agent in this communication (No. 816 dated 30th July, 1914) also quoted some instances in which tolls realised in such cases were refunded by State officials, and requested the Darbar to reconsider the matter. The Darbar in reply (No 472 dated 30th July, 1915) informed the Political Agent that their letter No 537 dated 8/7/1898 referred merely to military stores imported for the use of British troops and had nothing to do with the Postal Department Moreover, the Darbar said, "the arrangement of 1898 has ceased to exist since the removal of the British Cantonment from Bhuj, and therefore it cannot be made a ground to support a claim of toll exemption now asked for The concession allowed to the Political Agent as a matter of courtesy cannot also form a ground for the Post and Telegraph Departments to claim an exemption . . . Under all circumstances the Darbar regret their inability to extend the concession to the Postal Department" The truth of the matter is, of course, that in these matters, having regard to the inevitable character of the system of Government organisation in India you are bound to have many cases of subordinate officers putting forward claims, very often perfectly *bona fide*, in complete ignorance of what the rights of the State are In many cases the State submits to the local officer. If it protests, and asks it to be sent forward, it takes years, and pressure is always being applied to make them agree, and always a State is isolated.

Minutes of the Evidence given before the Indian States Committee at the Board of Trade, Great George Street, Westminster, S.W.1.

Thursday, 18th October, 1928, at 3.30 p.m.

PRESENT:

Sir HARCOURT BUTLER, G.C.S.I., G.C.I.E., *Chairman*.
Colonel the Honourable SIDNEY C. PEEL, D.S.O.
Professor W. S. HOLDSWORTH, K.C.
Lieutenant-Colonel G. D. OGILVIE, C.I.E., *Secretary*.

Their Highnesses the MAHARAJA of KASHMIR, the NAWAB of BHOPAL and the MAHARAJA of NAWANAGAR.

The Right Honourable Sir LESLIE SCOTT, K.C., M.P., appeared on behalf of the Standing Committee of the Chamber of Princes.

Sir Leslie Scott. Would you allow me, Sir, to answer a question you put to me on the first day about the list of States for whom I am speaking? The list which I handed to you before is, I believe, accurate, subject to the explanation which I gave on the previous occasion with regard to representative members and their constituents, with the exception that Bahawalpur should be added to that list, and I think there are one or two further additions to be made. I will let you know these as soon as I can

I come now to two very important cases which I shall take, one immediately after the other, from the State of Gwalior. They relate to the question of the claim by the Government to have all goods for the use of troops in cantonments in a State, or near a State, or even at some little distance from a State, supplied free of any custom or export duties The first of the two cases relates to the Cantonment of Neemuch and the second to the Cantonment of Mhow If I may ask your Secretary kindly to show you his map, it would be convenient before we look at the cases just to see where the two cantonments are. Colonel Ogilvie has kindly pointed them out, I see. You see Mhow is a little red patch inside the State of Indore with a patch of the green area of Gwalior close to it Neemuch is at the north-west edge of the group of States in the green at the point of the various roads meeting just where I am pointing now.

Chairman: Yes, we have got it

Sir Leslie Scott: I begin with the Neemuch case (page 135) The Neemuch case turns, in the first instance, on the question as to whether the Crown could claim immunity from State taxes by reason of a clause in the treaty of 1804. The case for the State is that there was no right to immunity conferred by that treaty at all, and that an alternative basis of claim by the Crown of a right in virtue of its paramountcy powers is also bad. The result is that the States submit that the Crown had no right to any immunity even for the military forces themselves, and even in respect of cantonments like Neemuch within the State of Gwalior. *A fortiori*, it is submitted by the States

that the Crown has no right of immunity for the civil population in the cantonment area; and *a fortiori* that the Crown has no immunity in respect of goods supplied to troops outside the State. The civil population question arises in regard to the Neemuch case. The claim of the Crown for immunity in respect of goods intended for troops actually outside the State arises in respect of the case of Mhow (page 130). The main point, therefore, in the case is this question of immunity. The second point in the Neemuch case is this From 1864 onwards the Durbar, as an act of grace, conceded immunity in respect of the troops in the Neemuch Cantonment That concession was, the Princes submit, abused by the Government of India to such an extent that a large trading community grew up in Neemuch all claiming the benefit of this gratuitous concession Within that trading community traders bought large quantities of goods far in excess of what was needed, either for the troops or for the civil population, using it as a means of keeping their goods at a lower price than their competitors outside. The third point is that the State, while still continuing its courteous concession for the troops, protested against these abuses to which I have referred The Government recognised the validity of the protest, and convened a Conference at which, the State still continuing to offer the concession to the troops within the State, agreement was reached by the two sides, and definite arrangements made for the future, on the basis of the State taxing everything as in the rest of the territory of the State, and then subsequently making a refund to the Cantonment Authorities apportioned to the consumption that might be estimated as being the consumption of the troops That agreement was duly accepted by the State, and they were ready to have it carried out Excuses were made of one sort or other—I am bound to call them excuses from the State's point of view—and in the result the agreement was never carried out at all Thirteen years later the Excise Commissioner for Central India put forward a totally different set of proposals, which would have made, if accepted, the state of affairs as regards the trading centre even worse than before That is where the matter stands to-day

The case is one that throws much light on many of the questions involved in your Reference, particularly the different legal aspects of it The first thing is to appreciate the basis of the original Clause I am going, as far as I can, to refer to the original documents, taking them as shortly as possible, but there are certain passages in the Memorandum which I can read as a shorter way of bringing the evidence to your attention (page 135) In 1803 was concluded the famous Treaty of Sarji Anjengaum (Aitchison, Vol IV, page 42), between the Maharajah Scindia and the Honourable East India Company By Article 15 of this Treaty the Maharajah was given the option of entering into a Treaty of general defensive alliance, in which event the Company engaged to furnish him with a subsidiary force of not less than 6,000 infantry, etc In 1804 he accepted the option By Article 3 of the Treaty of that year (Aitchison, Vol IV, page 53) the force was to be stationed at such place near the frontier as might be deemed most eligible by the British Government By Article 5, and that is the relevant Article, it was agreed that "grain and all other articles of consumption and provisions, and all sorts of materials for wearing apparel, together with the necessary number of cattle, horses and camels required for the use of the subsidiary force shall whenever

the aforesaid force is within the territory of the Maharajah in consequence of his requisition, be entirely exempt from duties; and whenever any further forces of the Honourable Company shall, in consequence of war within any other State, be in the dominions of the Maharajah they shall, in like manner as the subsidiary force, be exempt from all duties . . ." You observe, putting aside the second case of the further force, which is only applicable in the event of war within another *State, and therefore a matter with which we have nothing more to do,* since there has not been war in another State for the purpose of this case, the immunity was to be given only when that force was within the territory of the Maharajah in consequence of his requisition. That Treaty was confirmed, except in so far as it was altered by the Treaty of 1844 (Aitchison, Vol. IV, page 78), and as such re-confirmed by the Treaty of 1860 (Aitchison, Vol. IV, page 84). Between 1827 and 1844 certain forces were brought into the State quite separate from the forces referred to in the Treaty of 1804. It was in regard to those forces that there are certain provisions in the Treaty of 1860 which are relevant. It is necessary just to have these Clauses in mind and then we can go on with the story I am going to refer to the Treaty of 1844, Article 2· "Whereas the late Maharaja Junkojee Rao Sindia engaged to defray all the charges of a force, to be commanded by British Officers and constantly stationed within *His* Highness's territories" and offered to pay 5 lakhs a year for it under this Treaty, it was arranged to increase the forces and a further payment of 13 lakhs was to be made, making a total of 18 lakhs for forces to be kept within the State, quite different forces and wholly separate from the forces of the 1804 Treaty. Then Article 8 of the Treaty of 1860 says that "the British Government engages to keep in place of the late contingent force"—that is the one I have just mentioned—"a '*subsidiary force' constantly stationed within His Highness the* Maharajah's territories" Those are the Treaty provisions which are relevant. In 1863 an agreement was arrived at between the Naib Suba (Durbar's Assistant Collector) and Capt. Rose, Cantonment Magistrate, Neemuch (Exhibit 1), according to which the Durbar were to levy, according to the Manual in force, duties on all goods coming into the Cantonment. Will you refer now to the Exhibit in question, dated 19th February, 1863 (page 140). "I have the honour to acknowledge receipt of your kind letter together with a copy of Manual relating to the Superintendency, District Neemuch, directing the levy of Customs duty in accordance with the said Manual on the goods brought by merchants into the Sadar Bazar Camp in accordance with the wish of the Resident of Sadar Bazar and myself. As you have made every possible effort for the good of the people of Neemuch Cantonment, and obtained sanction of His Highness the Maharaja Sahib, I am very much pleased with you and communicate to you the thanks of the Resident of the place, whose hearty desire has been fulfilled. I, therefore, request that duties may now be realised in accordance with the said Manual If anyone will object to it I shall always be ready to render my help in the matter." The Government recognised that the State was entitled to exact its duties, and an arrangement was made, the Magistrate promising to give all possible support But a year later this letter (No. 127 dated 25th May, 1864) came from the Political Agent (Exhibit 2): "Prior to this, on receipt of a Rubkar dated 18th February, 1864, from the Court of Magistrate of Neemuch Cantonment

regarding import of grains required for the consumption of military stationed at the Neemuch Cantonment, a reply has already been sent. To-day I have received letter No 394 dated 17th March, 1864, from the A G G.C I., together with a copy of the proceedings from the Government of India, Foreign Department, No. 567, dated 3rd inst. The aforesaid Officer directs that H.H Maharaja Sindia, K.C.S I., be informed that H.E. the Viceroy and Governor General of India is of opinion that no transit duties or any other kind of tax should be levied on grains and other food stuffs The Agent G I hopes that the Durbar Officials who are in the Malwa Neemuch and Agar districts should not interfere in the matter of purchase of grains, etc , for the Neemuch, Mahidpur, Mhow, Agar and Goona Cantonments Official Parwanas on behalf of Durbar for non-interference in such matters should be issued from all the districts. I, therefore, write to you hereby. I hope that proper orders will be issued by the Durbar on the subject. I request you to favour me with an early reply so that the Honourable the A G.G C I may be informed accordingly."

My comments are obvious. The position as indicated by the Magistrate in Exhibit 1 was the correct position, the State being free within the State territory to exact the Customs duties upon anybody consuming goods subject to the duties, there being nothing in the Treaty or in any of the Treaties to exclude that right Then you have here the Political Officer threatening the Durbar with all the majesty and pomp of a statement that the Viceroy and Governor-General of India is of opinion that no tax should be levied on grains and other foodstuffs, and, practically speaking, requesting the Durbar to issue permits (Parwanas) so as to ensure the exemption desired by the Viceroy My submission is that that is wrong, and there is no justification for doing it You see the growth of the claim of a general right of immunity in respect of all Cantonments and all troops

The answer of the Durbar (Letter No 113, dated 17th June, 1864) is, as might be expected, submission to the pressure on the Viceroy's own wishes being intimated " I have received your letter I am enclosing 25 Parwanas " Then the Political Agent writes (Letter No 171, dated 20th July, 1864) acknowledging, and you observe what there is in the letter " The Parwanas were, as desired in your letter under reference, forwarded to the Honourable the A G G C I for distribution in the Cantonments In reply to the same, the aforesaid Officer writes to say that all the articles of food received for consumption in the Cantonments should be generally exempt from Durbar taxes As the Durbar might believe it to be reasonable, I beg to request you hereby that, in case it may be deemed proper, the Sar Sooba of Malwa, in which territory the arrangements are to be made first, should be directed by the Durbar to prepare sufficient number of Parwanas and to send them for distribution to the Cantonment Magistrate concerned, the name of the merchant and that of the stuff to be left blank and to be filled in by the last-named Officers The Durbar will be informed thereof through the Political Agent All the Cantonment Magistrates should be empowered by the Durbar to issue these Parwanas, filling in the name of the merchants and the foodstuff and communicate their having done so to the Durbar through this Office It will be better if the Durbar sanction the proposal for the Malwa Province, which contains several Cantonments and districts.

The merchant bringing goods to Cantonments passing through the States of Gwalior, Indore, Sitamou, Ratlam, Dhar, Dewas, Tonk and Jhalrapatan, cannot possibly obtain permits from all the States Besides, the permit of one State can be of no use in the other. It is hoped that you will kindly favour me with an early reply after doing the needful" You observe the tendency here to make the concession perfectly general and applicable to all States, the growth of an illegitimate denial of the State's sovereignty, and the State submits in the next letter (No 145, dated 28th July, 1864)

Then we come to the results (page 136, paragraph 10) It seems that the Durbar were subsequently persuaded to accord the necessary authority to the Cantonment Magistrates to issue Parwanas. The result was that the Cantonment merchants took advantage of the Parwanas of exemption and imported, free of duty, grain far in excess of the military requirements Thus these merchants were enabled to carry on a large trade to the detriment of the Durbar's Customs Revenue. The matter was taken up with the A G G. who did not agree to the establishment by the Durbar of the Customs post at the entrance of the Cantonments—which was suggested—(for realising duties on articles that went out), but assured the Durbar Vakil (Rubkar dated 21st June, 1878) "that the Cantonment Magistrate will arrange that no foodstuffs over and above the requirements of the Cantonment are brought within the Cantonment area"

I want to read that Rubkar (Exhibit 6) "Read Kaifiat No. 129 of to-day's date, submitted by the Vakil, Gwalior Durbar, acknowledging receipt of Parwanas for the goods indented by the merchants of Neemuch Cantonment" That will probably be the Parwana forms to be signed. "The Vakil expresses his doubt about the consumption of such heavy quantities of foodstuffs in the Cantonment, as well as the legality of the unusually large stocks of foodstuffs received by the traders in the name of the Cantonment by means of Parwanas, and suspects goods received in the Cantonment being sent out for personal gain of traders He suggests only limited number of Parwanas to be issued by the Cantonment Magistrate at Neemuch so as to suffice for the requirement of the Cantonment alone or to allow the Vakil of Miraj to establish posts in order to realise duty on articles going out of the Cantonment, and complains about the handwriting of Parwanas being illegible. It is, therefore, ordered that a copy of the Kaifiat referred to above, together with a copy of this Rubkar, be forwarded to the Cantonment Magistrate. The Vakil may be informed that there is no necessity to establish posts and that the Cantonment Magistrate will arrange that no foodstuffs over and above the requirements of the Cantonment are brought within the Cantonment area." Will you just notice that the posts that the Durbar sought to establish were posts at the boundary of the Cantonment, and not inside it? They were to enable customs to be collected on the goods going out. It is important to see that, because there is a reference to a post that had been existing for some time inside the Cantonment.

Exhibit 7. This is a Rubkar (dated 3rd October, 1878, issued by the Magistrate of Neemuch Cantonment) 14 years later than 1864 The abuse had arisen and this relates to the same matter: "I have received English letter dated 17th September, 1878, from the Political

Agent, Gwalior, together with a Kaifiat from the Vakil of Gwalior Durbar and a Marathi letter enquiring about the proposals regarding the establishment of Customs posts. It appears from a perusal of the records that a post connected with the Customs Office at Neemuch was established here in the Sadar Bazar, while 4 or 5 peons of that Department make rounds in their circles and Nij Bazar and put the shopkeepers in the Bazar to unnecessary harassment. The latter have complained that the Customs people, in spite of payment of taxes by them, gave unnecessary trouble and that, not only this, but they realised undue taxes from them On this subject letters were received from the Suba of Neemuch complaining against the shopkeepers for smuggling of grain without payment of State duties In view of the circumstances, it was decided in the Panchayat of Sadar Bazar that some arrangement may be made by binding the shopkeepers to furnish personal bonds in a way that such complaints be put to an end On this a Kaifiat was received from the Panchayat, which showed that the existence of posts in the Sadar Bazar was really a source of unnecessary trouble to the people and against the provisions of Clause 18, page 6, of the Bombay Army Regulations of 1875" To pause, incidentally, what have the Bombay Army Regulations got to do with the right of *the State to have its Customs post in the State territory?* "This Office, therefore, finding no other alternative, wrote to the Sooba at Neemuch to send for perusal any authority which he might have got from the Government or the Durbar or to withdraw the posts . "

Exhibit 8 is from the Dewan in reply (No 139, dated 14th December, 1878): "It is evident that the Naka"—that is the post—" at the said Cantonment is not a newly established one but continues to exist from times immemorial. An agreement was entered into . "—that is the Agreement of 1863 (Exhibit 1)—" and it was decided that duties might be realised from the merchants on the goods imported in the said Sadar Bazar Camp, in accordance with the rules for the Neemuch district Accordingly, the said Magistrate communicated his thanks in his letter dated 19th February, 1863, addressed to Naib Subha It was made clear in it that duties might be realised in accordance with the said rules and that if anyone would disregard them, the said Officer would be ready to help in the matter A copy of the letter was sent to the Residency, with letter No 23, dated 6th April, 1863, from the Durbar. The same rules are in force up to now In face of all this, the objections made by the merchants of the Sadar Bazar Cantonment which are based on mere imagination cannot be acceptable while taking in view the long established practice and the decision so far arrived at Where there is any old-established practice, it is always followed there. The Rubkar dated 21st June, 1878, issued from the Central India Agency which is taken as an order for the removal of Customs outposts from the Cantonment does not mean that It is a different case In the year 1878 when Parwanas regarding exemption of duty on the goods exported which were required by the merchants of the Cantonment, were received by the Durbar Vakil in attendance on the Honourable the Agent to the Governor-General, Central India, the Vakil submitted a kaifiat to the said Office, being suspicious of the export of the surplus goods from the Cantonment to other places. " Then the next paragraph "This shows that

the said posts proposed to be established were in addition to the one which already existed in the Cantonment. It was in respect of this post that the Rubkar dated 21st June, 1878, was issued from the Agency, holding it unnecessary to establish any post and directing that the Magistrate would manage that no goods over and above the consumption of the Cantonment are brought to that area. This order disallowing the establishment of the new post is in respect of the posts proposed by the Vakil, not the post which exists in the Cantonment from old times. Under the circumstances the objections raised by the Cantonment Magistrate to the abolition of the post deserve every consideration and any action against the old practice is expected to cause a loss to the Durbar. This letter is therefore forwarded to you in reply for favour of consideration of the proposals mentioned therein."

Now, Sirs, I read a few of these letters in order to show what the attitude of the State is in circumstances of this kind. My submission is that throughout the whole of this case you see very reasonable concessions made by the State, and a growing claim by the Crown to impose upon the State a general regulation You will see how it grows. Then the Political Agent, Western Malwa, replies (Letter No. 225, dated 14th April, 1878, to A G.G.) in Exhibit 9. Paragraph 2: "I have seen the correspondence between the Political Agent, Gwalior, the Magistrate, Neemuch Cantonment, and Gwalior Durbar. It appears that the Gwalior Durbar hold the duty in question as being levied in the Cantonment from old times. I agree"

You see that is the Political Agent who recognises that the duty has been levied from old times Paragraph 3. "The Cantonment Magistrate, Neemuch, wants to know with reference to the said Vernacular Rubkar, whether or not clear orders were issued by the Agent G G, C I, or the Durbar about the levy of the duty on all the foodstuffs imported in the Cantonment area or exported therefrom." Paragraph 4: "It is evident that while the Customs post in the Cantonment was abolished, it was impossible to levy the duty in the Cantonment but presumably the Durbar will not agree to this for the reasons that permission to levy duty on the goods imported to and exported from the Cantonment were granted after settlement between the Cantonment Magistrate, Neemuch, and the Subha, District Neemuch, in the year 1862 . . ."

Sirs, again I desire to emphasise what I submit is an entirely erroneous view. Here is this Political Agent thinking that the right of the State to levy its own duties in its own territory was a right which depended upon the permission of the British Authorities. Paragraph 6: "Captain Ross proposed to levy the duty within the Cantonment, under his own authority, which I do not approve The practice in this Cantonment should be just like other cantonments and it is that all the foodstuffs brought for the use of the Cantonment people are exempted from duty. But the Durbar have a right to realise duty on such goods as are exported from the Cantonment, in accordance with the rules in force in the Durbar territory." There you see the claim, full grown, to have all goods in the Cantonment duty free. Then the Durbar, still anxious to oblige, is willing for peace to accept

that, and says so in Exhibit 9a (Letter No. 629, dated 29th April, 1879, from First Assistant to A.G.G., C.I., to Political Agent, Western Malwa). Then (Exhibit 10) from the Political Agent to the Vakil (No. 211, dated 19th June, 1879). Paragraph 2: "In reply I write to say that the general practice of levying duty on import and export of goods within the area of Neemuch Cantonment in accordance with the rules framed by Captain Ross, Magistrate, Neemuch Cantonment, and Bagmal Bantia, Assistant Suba, Parmat, Durbar Gwalior,"—that is of 1863—"which hitherto continued without the sanction of the Honourable the Agent to the Governor-General in Central India, has now been abolished with the approval of the latter. The rules on the subject as in force in other Cantonments regarding the levy of duties on goods will, therefore, be applied to the Neemuch Cantonment as well, which cannot be exempted from the general rules applicable to other Cantonments in this respect." You observe that this gentleman in 1879, the Political Agent, expresses the view that the levy of duties in 1863, as is admitted in an earlier letter, in accordance with ancient practice, could not be valid without the sanction of the Honourable the Agent to the Governor-General, and that the Government were entitled, although an agreement had been made about it in 1863, by a stroke of the pen to abolish it I venture to submit that that is a very striking instance of the particular form of grievance that we are investigating. It ends there In 1907 you find the matter cropping up again (Letter No 3727, dated 2nd November, 1907, to the Resident, Gwalior) "I am directed by the Durbar to address you in regard to certain points connected with the reorganisation of the Customs and Excise Administration of this State. The Durbar have had this matter under consideration for some time and under their orders a scheme has been formulated for the better management of these departments. Since, however, the territory of Gwalior is not an isolated tract but is set in the midst of other jurisdictions, contains enclaves consisting of British Cantonments and villages of other States within its borders, and includes other areas with which the Durbar are unable to deal on their own initiative, the Durbar venture to approach the Government of India with the view of obtaining their aid in carrying out the proposed reforms" To Sir Harcourt Butler I know the matter is very familiar, I do not know whether the other members of the Committee are equally familiar with it, but the State of Gwalior is scattered over the surface of the map there in a great number of different portions, and you have only to look at the map to see how reasonable was their request for assistance from the British Authorities as well as from other States in carrying out the administration of fiscal laws of this kind The green are the pieces of Gwalior It is obviously, from an administrative point of view, a very difficult problem The letter goes on "In the first place the friendly co-operation of neighbouring States is essential to the success of the new arrangements, and to attain this object the good offices of the Government are solicited. Similar assistance is necessary in the case of British Cantonments situated in, or bordering on the Gwalior State." That first sentence, of course, is inevitable in view of the policy of isolation in which the States were then kept, not allowed to make Customs agreements with each other.

Now in this same letter, paragraph 4, sub-paragraph (j). "With regard to the levy of Customs duty at British Cantonments in the Gwalior territory, the Durbar think that all articles imported for the use and consumption of troops and their sanctioned scale of followers should be treated as privileged and be admitted free of duty; all other imports being taxed at the frontier as in the ordinary course." The Durbar are saying there that as a matter of grace and concession we ought to allow you the foods for the troops free of duty, and we propose to do so, but everything else ought to be taxed "To ensure that the privilege"—you notice the word "privilege," not a right, the privilege being conferred by the Durbar—"To ensure that the privilege is exercised within the proper and reasonable limits the Durbar propose that the practice of limiting such exemptions to goods covered by Parwanas specifying the quantity and the number of goods over the signature of Political or Commanding Officers be strictly and uniformly adhered to The Durbar understand that the proposed limitation is one that is already strictly enforced in regard to supplies imported into British Cantonments established in other Native States under Treaty arrangements similar to those applicable to the maintenance of the subsidiary Force employed within the limits of the Gwalior State. The Durbar think that looking to the history, nature and scope of these military stations, the Government of India will agree with them in the view that these Cantonments were never intended to be converted into and used as commercial marts to the prejudice of the interests both of the Durbar and their other subjects outside the Cantonments. The plea of prescription, sometimes set up by Cantonment authorities for the exemption of non-privileged merchandise, is on the face of it untenable, and the Durbar earnestly hope that the Government of India will discountenance it in the interests of efficiency of administration" In response to this representation the Government of India called a conference* in 1909 of some high officials of the Government and the Durbar to discuss the question regarding customs in Cantonments. The recommendations made by the conference—I think they were unanimous—may be summed up as follows —

(1) That the British Cantonments situated in the midst of the Durbar territories cannot be allowed to become trade centres.

(2) That the Durbar were entitled to tax the civil population of the Cantonments, and

(3) That the military population only should enjoy the benefit of duty-free supplies

The methods suggested for giving effect to this exemption were (1) That the standard of consumption of the military population may be fixed (2) That the Durbar may freely realise Customs duty on all goods imported into or exported from the Cantonments. (3) That in return for this the Durbar should pay annually to the Cantonment authorities a sum calculated by applying to the standard of consumption the number of exempted classes

I need not trouble you with those exhibits; there are long exhibits, but I want you to look at Exhibit 14 (page 167), because there are

* Held at Indore on 20th September, 1909.

some very important passages in it It is from the Resident at Gwalior (No. 6319, dated 2nd October, 1909) to the Political Secretary of His Highness the Maharaja. It repeats those outlines of the Conference, and says in paragraph 4, "The scheme is an enormous advance on the arrangements hitherto in force, and the Durbar desire to include in it the British Cantonments situated in their territories . ." Paragraph 5. "The Durbar's proposals were forwarded to the Agent to the Governor-General and a note was prepared in his office summarizing the existing arrangements and the correspondence that has taken place regarding them discussing the Durbar's proposals and propounding an alternative arrangement which, it was thought, might perhaps prove acceptable in the event of the Durbar's proposals being found to be impracticable. Copies of this note were supplied to the Durbar and to the Cantonment authorities, and the Conference was convened with the object of discussing the suggestions contained in the note and any other suggestions that might be propounded at the meeting. A copy of the note is attached to the proceedings of the Conference, and the proposals formulated by the Durbar and the alternative arrangement suggested are discussed in paragraphs 11-14 thereof. 6 On the Conference commencing business it was evident that there was, on the part of the Cantonment authorities, a general desire that the existing arrangements should be retained, and the Officer Commanding at Goona challenged the right of the Durbar to effect a change, contending firstly that Goona is British territory, and secondly that its inhabitants are entitled to claim by virtue of prescription, the retention of the existing arrangements 7. From this view I desire to disassociate myself entirely, and it was, I believe, the general feeling of the Conference that it was untenable . . ." Then follow reasons pointing out that it is foreign territory and not British territory Then 8 "The claim by virtue of prescription is in my opinion equally untenable—there has been no adverse enjoyment of any right, the existing arrangements (which differ in the cases of different Cantonments) being in one case based on an agreement between the Cantonment authorities and the local officers of the Durbar, and in others a part of or at least a modification of the system hitherto in force in the Durbar's territories generally It may be added that the arrangements have not been of so immutable a character as to warrant a prescriptive claim to their retention" A very sound paragraph 9 "My own view which I believe was shared by the Conference generally, is that the Durbar are entitled to impose on the supplies of the non-exempted population of Cantonments such taxation as they think fit and that right is limited only by the duty of making adequate provision for the exemption of the supplies of the exempted portion of the population It follows that the Durbar are entitled to demand the acceptance of any scheme propounded by them which can be shown to provide for the fulfilment of that obligation, in preference to any alternative scheme that may be propounded by the Cantonment authorities"

"10 The Durbar have urged that they are under no treaty obligation to exempt from their taxation the supplies of British Cantonments situated in their territories, and that they have hitherto committed themselves to no concession beyond the exemption of articles required for the use of soldiers in service and Government stores"

They make their legal position quite clear and that is recognised. "11. Whether the Durbar are bound by any Treaty obligation is a question regarding which there is some room for diversity of opinion. The Officer Commanding at Goona urged that garrisons of the cantonments of Agar and Goona can trace, through the contingent force mentioned in the Treaty of 1844, an indirect connection with the subsidiary force mentioned in the Treaty of 1804, and that they are entitled to the benefits of that Treaty. It is true that the benefits of Article 5 of the Treaty of 1804 were to be enjoyed by the force only when within the Maharaja's territories on his requisition, and that Agar and Goona are now occupied by permanent garrisons in respect of which no formal requisition has ever been made. But the records of the Central India Agency Office show that, in the course of the negotiations that preceded the exchange of territory effected by the Treaty of 1860, the then Maharaja expressed anxiety that the troops stationed in his territory should be withdrawn and that Major Meade gave him an assurance that no such step was contemplated. This might possibly justify the argument that the garrison should be regarded as stationed in Gwalior territory on the requisition of His Highness. The argument is to my mind not very convincing nor is the connection of the Central India Horse with the subsidiary force of 1804 particularly clear. Nor does there appear to me to be any connection between the garrisons of Neemuch and the subsidiary force mentioned in the Treaty of 1804 But I can find no other treaty that would justify the following statement in the Government of India's Resolution No. 567, dated the 3rd March, 1864 ·—' In some Treaties, as for instance that with Scindia, it is expressly stipulated that duties shall not be levied on food intended for our cantonments ' "

I want to pause for a moment, Sir, there with just this observation that there is no treaty in which that is stipulated The only provision is in the Treaty of 1804, that when the subsidiary force provided by that treaty was brought into Gwalior at the request of the Maharaja that immunity should apply, and it seems to me a very good instance of the way in which a misconception, when it has once got on to Government records at the instance of some officer who has not quite understood the position, is apt to be treated by Government as an accurate statement of a legal right and become the basis of action by Government of a rule to be applied to other States

"12. It appears to me, however, that the question whether the present Cantonments are entitled to the benefits of Clause 5 of the Treaty of 1804 is one of comparative unimportance, seeing that benefits not less than those conferred by the Treaty can be claimed irrespective of treaty on general grounds of Imperial policy. In the words of the resolution of 3rd March, 1864, ' The obligation which rests on the British Government to protect Native States and maintain the general peace gives to Government the right to claim from those States the concession of every condition which is essential to the convenience and the unimpeded supply of the troops thus employed ' " I will assume that the words "unimpeded supply of the troops" means unimpeded supply of supplies to the troops and does not mean merely supply of the troops. I will assume that. But how can it be essential for that purpose that the goods supplied to the troops should be free of customs any more than that they should be free of the price to be paid to the

vendors? It reminds me of the argument that was put up by the Crown during the War about the requisitioning of property for the defence of the realm; it was said that the Crown must be entitled to requisition it free of charge because it was essential for the conduct of the War that the possession of the property should be obtained; and the House of Lords pointed out, with some force, that it did not make it necessary for the Crown not to pay for what it took. It could take what it wanted but the question of payment had nothing to do with the case. That claim of a right to have all the troops enjoying immunity from local taxation in the States on the ground of paramountcy is, I submit, a good illustration of the improper uses in a legal sense to which this notion of paramountcy has been put. My respectful submission is that there is no conceivable view of paramountcy which would justify it. Paramountcy historically, in my submission, in the relations between the Crown and the States has come to be used more and more as a reason for Government conduct when the Government was quite unable to think of anything else, and particularly when it had put forward one argument and had been convinced against its will by the argument of the State that the argument was wrong.

"13. The scope of the exemption from Durbar taxation that the principle mentioned in the last paragraph justifies the Cantonment authorities in claiming from the Durbar is a question regarding which there is room for considerable diversity of opinion The Durbar representatives contended that the exemptions should, as a matter of principle and right, extend only to fighting men, in support of which they relied on the view taken by the Agent to the Governor General in 1860 of the Treaty obligations of the Durbar as extending only to 'all grain required for soldiers in our service' . . The Cantonment representatives relied on the wording of Durbar permits for goods required for the consumption of the Cantonment (Masarif Chaoni) and in the case of Neemuch on existing practice, as justifying a demand for the exemption of the supplies of the entire population of Cantonments." There you get recorded an instance of the extreme pretensions being put forward of a practice permitted for a certain length of time being regarded as the basis of a right and extended as you see there to the entire population of the Cantonments Of course, this Political Officer is not saying it is right, but is merely saying it as the view of the Cantonment representatives

"15 The existing practice at Neemuch—viz, the exemption of all imports and the taxation of all exports"—which would leave everything consumed in the Cantonment free of duty—"would justify a claim to the exemption of the supplies of the entire population if it could be shown either that the arrangement was the outcome of agreements as engagements intended as a permanent settlement of the claims of the Cantonment to exemption, or that it has been so enjoyed as to warrant a prescriptive claim based on adverse possession Neither of these propositions can, in my opinion, be adequately maintained"

"16 In the absence of any more authoritative and definite criterion, it appears to me that the question at issue can only be dealt with on a basis of equity and common sense"—Why not a legal basis · try and ascertain what the rights and obligations of the two parties really are, and, having ascertained that, come to some reasonable arrangement?—

"and it is my view that the Durbar can legitimately be asked to exempt not only military stores and the supplies of the fighting men and of the troop horse, but the supplies of all camp followers, servants and artisans who are dependent solely on members of the fighting force, and the taxation of whose supplies falls indirectly on the members of that force Theoretically, the exemption might be extended to the private supplies (as well as to the stock in trade) of the tradesmen who supply the various classes of exempted persons, but such an extension would, in practice, give rise to difficulties owing to the fact that the business of such tradesmen is not exclusively confined to supplying the requirements of exempted persons, and that they are not entitled to exemption on that portion of their subsistence which they derive from their dealings with non-exempted persons" I cannot help asking—why is it equity and common sense, as is suggested, that the general cost of living in Gwalior, influenced as it must be by Gwalior taxes, should be specially reduced even for the troops? If the British Government had thought that it was equity and common sense, surely the British Government in 1860 would have put a clause in the treaty saying: We want to have this privilege; and then it would have been a matter of bargaining and the Government might or might not have got it. But it did not, and you saw that in 1863 the practice within the three years of the treaty was that everybody should pay the taxes

"17. The exemptions which the Durbar representatives, while denying that they can be claimed as of right, were prepared to advise the Durbar to grant, comprise, of course, all munitions of war and other Government stores, and they extend to all persons subject to the articles of war . . ." There is just one thing in the next letter (Exhibit 15); that is from the Political Secretary of the Government of Gwalior (No 2793, dated 18th October, 1909, to the Resident, Gwalior). It is just two paragraphs showing how reasonable they were: "3 The Durbar are so substantially in accord with the proposals embodied in your letter as the outcome of the deliberations of the Conference that all that remains for me to do is to communicate to you the Durbar's acceptance thereof accompanied by a few explanatory remarks here and there" That was in 1909 To resume the thread of the narrative, the Resident in a communication (No. 2434, dated 27th May, 1911) inquired from what date the Durbar desired to bring the arrangements into force The Durbar (letter No. 71, dated 6th July, 1911) proposed 1st August, 1911, as the date from which the new arrangements may be introduced In another communication (No. 3158, dated 14th July, 1911) the Resident stated that the Cantonment Magistrate, Neemuch, had recommended that the introduction of the new system should be postponed until the beginning of the next financial year, and wanted to know the views of the Durbar on the subject. As regards Goona and Agar he suggested (letter No 3285, dated 21st July, 1911) "that 1st September, 1911, may be fixed." A week after the Resident (letter No. 3497, dated 3rd August, 1911) forwarded copy of a telegram from the Central India Agency requesting the Durbar to issue instructions suspending introduction of scheme until convenient date had been settled by mutual agreement That was in 1911, and nothing has been done yet Now, Sir, I want to turn to Exhibit 17, which came into existence during this year, 1911, from Lieutenant-Colonel Kemball, the Resident at Gwalior, to the Durbar

(No 2434, dated 27th May, 1911). "With reference to the correspondence ending with your letter of the 18th October, 1909, regarding the customs duties levied by the Gwalior Durbar at Goona, Agar and Neemuch, I have the honour to communicate the following orders of the Government of India. 2. As regards the contention of the Gwalior Durbar that they have an inalienable right to impose taxation on goods entering or leaving the above-mentioned Cantonments, the Government of India are quite unable to accept the view that the military units at present stationed at Agar, Goona and Neemuch have no connection with the subsidiary force of the Treaty of 1804 or to admit that the Durbar have any right to tax the garrisons and the classes connected with them. It may be true, as the Gwalior Durbar assert, that the conditions in which the present garrisons were established are different to those in which the subsidiary force of 1804 was created"—different also in the sense that they were created under different treaties—"But in the opinion of the Government of India this does not affect the question The troops which have been stationed from time to time in Gwalior territory have been maintained in pursuance of the obligations imposed upon the British Government by Article 6 of the Treaty of 1804"—that is an entirely inaccurate statement—"and the rights of the troops and of the classes connected with them to exemption from taxation has throughout been recognised"—that is a monstrous travesty of the attitude of the Durbar—"and so far as the Government of India is aware has never been called in question by the Durbar. In the circumstances the exemption reserved to the subsidiary force of 1804 by Article 5 of the Treaty must in the opinion of the Government of India be held to apply to the troops now stationed in Gwalior territory." I venture to submit that any lawyer looking at those treaties would say straight off, without the faintest hesitation, that that attitude by the Government was wholly untenable They lay it down as their *ipse dixit* in dictatorial tones without the slightest suggestion that If you take a different view, let us have it disposed of by some person competent to interpret a treaty—"It is considered not open to the Durbar to put forward now claims based on a literal interpretation of treaties, many of the provisions of which are obsolete or have to be construed with reference to conditions which have subsequently arisen So far, therefore, as the troops and the classes connected with them are concerned, the right to exemption, in the opinion of the Government of India, is secured both by treaty and established usage, and is not open to dispute"—Now, Sir, I say deliberately and without hesitation that that is a disgraceful letter for the Government to have written—' 3 As regards, however, the civil population of Cantonments the claim of the Durbar to impose taxation rests, in the opinion of the Government of India, on an entirely different footing, and must be admitted, although in the case of Neemuch, usage it is thought, might possibly justify the adoption of a different principle This decision is in accordance with the settled policy of the Government of India so far as possible to restrain the growth of Cantonments in Native State territory into trade centres"—Then you get the paramountcy argument coming in—"4 The position so far as the rights of the paramount power are concerned having thus been made clear, the Government of India see no objection to a trial being given to the arrangements which the Conference had suggested

and to the classes of persons and the articles which it is proposed to exempt being accepted."—I like their notion of the rights of the paramount power being made clear. They sought to rely upon the terms of treaties which do not apply and have given no shadow of ground for saying there is any paramountcy right affected in the matter.—" 5. The Honourable the Agent to the Governor-General in Central India has therefore requested me to arrange to bring into force as an experimental measure the arrangement suggested by the Conference and to submit a report after 12 months' experience of its working. I shall be glad to hear in due course from what date the Durbar desire to bring the arrangements into force "

Here is the answer (No. 899, dated 5th August, 1912): " (2) I have already written to you thanking you for the reply, and arrangements for giving effect to the scheme are under correspondence separately. There is, however, one dictum in your letter which calls for remark. It runs thus: 'It is considered not open to the Durbar to put forward new claims based on a literal interpretation of treaties, many of the provisions of which are obsolete or have to be construed with reference to conditions which have subsequently arisen.' (4) The sweeping terms of the above pronouncement have filled the mind of the Durbar with anxiety, if not alarm As it stands the pronouncement is pregnant with a standing menace to the undoubted solemnity and immutability under all ordinary circumstances of the mutual obligations contained in Treaty provisions. The Treaties are the palladium of the rights and privileges of the Durbar, and the scrupulous regard with which the British Government have always maintained intact both the letter and the spirit of the Treaty provisions constitutes the strongest bulwark of the integrity, safety and permanence of whatever of territory and rights was left to the State on the conclusion of the Treaties. They cannot, therefore, I am directed to respectfully submit, be regarded as liable to be considered obsolete, or to be construed with reference to the exigencies of changed times, except where an inexorable and all-compelling necessity demands it, which contingency, however, is extremely rare, if not impossible, in these days. Taking the present case, it may be noted that the Durbar had already cheerfully offered exemption from duties in regard to the military population as a matter of comity and mutual helpfulness Thus the Government's object was fully secured, and, therefore, the necessity of construing the Treaty provision in a special way was non-existent, much less was it an inexorable necessity. *(5) The above extract from your letter, inter alia, speaks of the* Durbar as putting forward 'new claims based on a literal interpretation of treaties' It is worthy of consideration how far the Durbar's negative contention (viz., that Article 5 of the Treaty of 1804 does not apply to the circumstances of the present case) deserves to be called a 'claim' and that, too, a 'new claim' I humbly submit that the Durbar claim nothing. It is the Regiments that claim as a matter of right the exemption from duties, which the Durbar had voluntarily given on a basis which has the merit of obviating a new construction of the Treaty provision (6) The way in which the principle of interpretation is enunciated is so disheartening that the Durbar feel it their duty to seek at the benign hands of the Government such reassurance as will remove all their misgivings and fortify their faith and conviction that the Treaties are the last thing to be subjected to interpretations changing

with every change in the conditions as they arise from time to time. (7) With these remarks I respectfully submit the point, so vital to the position of the Durbar, for the sympathetic consideration of the benign Supreme Government." It is almost shocking that after the letter such as the letter from Colonel Kemball, the state of mind in which these Indian States have been should cause a great State like Gwalior to write a cringing, humble, pleading letter in answer to what was a monstrous claim. It is time they had their freedom

Chairman: This was in 1911?

Sir Leslie Scott: Yes. It is pathetic. I have very nearly finished this now. If you would be so good as to turn to page 171, there is another letter from Colonel Kemball (No. 4264 dated 15th September, 1911), which says: "I have the honour to invite a reference to the correspondence . . . on the new Customs arrangements at Neemuch, Agar and Goona, and in accordance with instructions received by me from the Honourable the Agent to the Governor-General, to bring to the notice of the Darbar that the traders of Neemuch have submitted a representation to the effect that under the new scheme they will be placed at a disadvantage as compared with other Gwalior trade centres *such as Ujjain and Mandsore. As you are doubtless aware, certain* Municipal Taxes . ." etc —I need not trouble you with the details. Then the last sentence · "I have, therefore, been directed to suggest that, as a necessary preliminary to the introduction of the new scheme, the Gwalior Darbar should depute a representative to visit Neemuch and in consultation with the Political Agent in Malwa and the Cantonment Authorities, endeavour to arrive at a decision on the question of giving effect to the orders of the Government of India, and the time from which the new orders should come into force.' The Darbar deputed a representative and informed the Resident (No. 5201 dated 9th January, 1912). The Resident (No. 187 dated 13th January, 1912) sent a copy of a telegram from the Agency asking the Gwalior representatives to postpone their visit The Darbar (No 9006 dated 25th May, 1912) reminded the Resident that the 1st September, the date fixed by him for the introduction of the new scheme in Goona and Agar had expired, and as the Darbar were losing heavily they requested him to arrange to give effect to the decision of the Government of India in Goona and Agar Cantonments immediately The Resident (No 2732 dated 29th May, 1912) wrote to say that "the decision regarding the introduction of the Customs arrangements in these two Cantonments is dependent on the decision arrived at with regard to the Neemuch Cantonment and the question cannot be settled separately." Why, I cannot see There is a limit to all evasions, but Colonel Kemball, the Resident, re-opened the question (30th March, 1912) by observing that the standard of consumption of foreign goods by the exempted classes should be based on the standard of consumption in the Punjab, Mhow, and Nasirabad Cantonments, and not on that of the population of the State as accepted by the Conference and suggested an annual payment of Rs 5578 by the Darbar in respect of Neemuch Cantonment An Agreement was made at the Conference at which, as a matter of fact, the Darbar had very much fewer representatives than the Government The whole thing was settled It may have been a good bargain or it may have been a bad bargain. but, at any rate, the authorities of the Cantonments were very strongly

represented. They agreed, and then the whole thing is ripped up. As this solution was extremely prejudicial to the Darbar, and still more objectionable on the ground that it nullified the Resolution of the Conference of 1909—now three years old—they represented that the highest incidence admissible was 14 annas per head, but with the object of giving effect to the new scheme they were prepared to offer an all-round rebate of Re. 1 per head on the numbers actually obtaining. The Resident replied (No 3443 dated 25th June, 1913) that as the rate was inadequate it could be accepted only on the understanding that the Darbar's tariff should not be altered; and that it was advisable for the Darbar to accept the proposals set forth in Colonel Kemball's letter. Just note that phrase "advisable." That kind of covert threat is so often made Thereupon the Darbar addressed another communication (No 1063 dated 30th August, 1913) suggesting that either the flat rate of rebate offered by them may be accepted or an alternative standard of consumption of the civil population of the Cantonments may likewise be fixed, and the entire Customs revenue derived from the Cantonments divided between the Darbar and the Cantonments, in the proportion of the total sum of each section of the population. To facilitate matters, the Darbar further offered to leave the settlement of the whole question in respect of the Neemuch Cantonment *only* (the Cantonments of Agar and Goona having since been abolished) in the hands of the late Mr. Cox. The matter having been hung up for nine years the Resident was reminded in 1922 (No. 1384 dated 28th August, 1922) and then in 1924 (No 145 S. dated 16th December, 1924) After full 13 years the proposals of the present Excise Commissioner (No 819 Exc., dated 13th March, 1926) have been received, which are wholly new proposals I may say. They were: (1) That the Cantonment would exempt from taxation goods imported from any place within the Gwalior State; (2) The Cantonment would levy on goods imported from outside the State duties at the Darbar rate, but salt, liquor, opium, hemp—drugs and petroleum would be exempt from the payment of such duties Then there are various other proposals. I am not going to read them in detail. Let us take the second proposal, that no tax should be charged by the State in the State because the proposal was that the Cantonment should levy the taxation, not the State, on salt, liquor, opium, hemp—drugs and petroleum I venture to submit that the reason why that was put in was that the Cantonment people wanted to avoid double taxation. They wanted to avoid the necessity of paying the British India duties, customs and excise on these articles, and in addition State duties on the same articles, a very reasonable point of view. We all of us have rather a feeling against double taxation when we pay it ourselves, but it is very significant that it is put in as showing the pinch of this double taxation. I ask you just to bear that in mind in relation to the question raised in the economic part of the Introduction which has been put before you, which I shall have to refer to at a later stage It is a grievance that all the States feel. The proposals are subject to the reservation that "a final settlement on these lines cannot be guaranteed until it has been possible to review the result in actual working." I think that is all I need refer to, except to one passage in Colonel Kemball's letter of 30th March, 1912, paragraph 13: "The Honourable Mr O'Dwyer regrets to be compelled to re-open a question that he would have preferred to regard as settled

by the deliberations of the Conference of the 5th August, 1910."—He appreciated the State's points of view, evidently.—"But he has been directed by the Government to arrange the details of the scheme in communication with the Gwalior Darbar, and he finds on a careful examination of the subject that the standards accepted at the Conference are so obviously unsuitable for application to the exempted classes that he is forced to the conclusion that the objections urged against them at the time by the Cantonment Magistrate of Neemuch were overruled without adequate knowledge and consideration ." So it had to be gone into all over again. The matter is under the consideration of the Darbar. The following points, however, are worth consideration so far as the proposals of the Excise Commissioner for Central India are concerned: (1) That the proposals are subversive of the principle recognised by the Government of India that a British Cantonment situated within the Darbar territories cannot be allowed to be made a trade centre. (2) The exemption from taxation of liquor, hemp—drugs, opium and petroleum, etc., imported into the Cantonment would enable it to compete on favourable terms with the marts of the Darbar, and the remedy would thus be worse than the disease. (3) That the right to taxation and exemption is an inherent right of the Darbar and by asking the Darbar to accept refunds the Cantonment Authorities are attempting to alienate from the Darbar the sovereign right of the levy of customs which inherently vests in them (4) That the area granted by the Darbar for the Cantonment is being used as a quasi-foreign market in which the Darbar's own subjects usurp commercial rights and privileges to which they are not entitled in the State

Those, Sir, are the Cases of Neemuch and Goona I come now to Mhow which I am glad to say is short (page 130) This relates to export duty You remember the position of Mhow, outside the State of Gwalior It relates to the ordinary taxation by the State of Gwalior exacted upon goods once in the State, whether they are going to be consumed in the State, or whether they are going out of the State In this case it relates to their going out of the State It is not an export duty, it is simply a tax on goods, but it takes the form of an export duty in this case We can get most of it, I think, from the documents themselves without troubling about the text Exhibit 1. This is one single document and is an admirable text for raising five different points of real practical importance in your Inquiry, Sirs It is an application from a contractor (Laloo Beopari, dated 29th November, 1905), and it is addressed to the Cantonment Magistrate of Mhow, outside the State. "I beg to say that according to Parwana No 338 granted by the Central India Agency"—that is Point 1—"dated 24th May, 1906, I was bringing 269 goats and sheep from Pachora (Gwalior territory) for the use of the Officers' Mess, Mhow, Central India"—that is outside, that is Point 2—"On the way to Gwalior Darbar officials recovered Rs 11-14 9, as tax from me at Pachora, etc, and paid no heed to the exemption from tax provided by the Parwana"—it was not signed by the Darbar, but had been merely signed by the Central India Agency—"I produce herewith receipts in original—these officials had no authority to recover the tax from me as I had the Parwana" That is to say 'The State of Gwalior had no right to recover from me, a contractor subject to the ordinary law of the State

in respect of my business carried on in that State, because I had an exemption signed by the British Government.' "I, therefore, beg to request that you"—the Cantonment Magistrate at Mhow, outside Gwalior—"will kindly send for the amount and return the money to me," and as a mere matter of routine, thinking it the most natural thing in the world to do, the Magistrate (No. 1509 M. dated 14th December, 1906) sends his application on to the First Assistant to the Honourable the A G.G, and the First Assistant to the Honourable the A.G G. as a matter of routine, the most natural thing in the world to do, sends it to the Resident at Gwalior who forwards it (Letter No. 3118 dated 18th May, 1907) to the Political Secretary to His Highness the Maharaja Scindia for his remarks. I venture to submit that that one document raises these points. (1) The denial of the State's right inside the State to tax goods in course of export to its ordinary export duty, the denial being put forward on the ground that the destination was an Officers' Mess of the British Army outside the State. (2) The claim by the Central India Agency to issue permits, i e., to exercise the State's sovereign right of granting exemption and ordering Customs Officers of the State to obey the Agency Parwana is another denial of State rights (3) The Cantonment Magistrate is exercising functions of a purely executive character on behalf of the Paramount Power, and in no sense judicial, and the whole question is raised as to whether he is given any such jurisdiction at all. It does not arise here That arises on the Jurisdiction Cases (4) The application for relief is addressed by the Contractor, not to the Darbar to ask the State to honour the Parwana, but to the British authority resident in the State. (5) The Magistrate is regarded by the Contractor, presumably a State subject, as an executive officer, and asked to order the officials of the Darbar to act.

Now, Sir, I venture to submit that all those points arise, and that the comment is that it is difficult to find a better illustration of the contemptuous treatment by the British Authorities of State sovereignty than that. Well, the answer to it is this (No. 9547A, dated 29th May, 1908) · "With reference to your office endorsement No. 3118, dated 18th May, 1907, forwarding for remarks a copy of translation of an application from . . . . alleging that he had been carrying 269 goats and sheep from Pachora, in the Gwalior territory, for use of Officers' Mess, Mhow Cantonment, on which the Durbar officials recovered duty from him, I am directed to say that the Durbar have been unable to gather as to what particular settlement mutually arrived at in this behalf with the Supreme Government precludes them from levying duty on provisions purchased in their dominions by contractors for the use of Cantonments situated beyond their limits A reference to the treaty engagement shows that the only provision made in this behalf appertains to such provisions being exempted from duty as are 'required for the use of the subsidiary Force' when the said force is within the territory of the Maharaja (Scindia) in consequence of his requisition. If this proviso were applied to the British Cantonments situated within the Durbar territory, they would be willing to concede the point and exempt from duty supplies purchased for these Cantonments, as a matter of courtesy. But its application to the Cantonments which are situated outside their territory would be investing it with a meaning which the arrangements could not have been

intended to convey, as it would have been apparently unjustifiable In view, therefore, of the above remarks, I am to say that the applicant's request for remitting the alleged amount of duty, being untenable, cannot be entertained." From the Judicial Secretary to H.H. The Maharaja Scindia to the Resident at Gwalior (No 53, dated 2nd July, 1908), (Exhibit 3): "I am directed to invite a reference to your endorsement No 2181/316-08, dated 9th April, 1908, forwarding a vernacular Parwana for allowing . . . . to purchase 500 goats and sheep, free of duty, within one year, from certain districts of this *State, for the Officers' Mess of Mhow Cantonment, and to say that* the Durbar regret that they have not been able to fully comprehend the necessity of issuing such Parwanas for Cantonments situated outside the Durbar territory, which, it is requested may kindly be made clear to them. . . ."—and they point out that he would have had to pay local municipal dues anywhere in British India, and why should he not pay the local dues in the State of Gwalior? "2. In exempting from duty the provisions purchased by these contractors within the State territory the Durbar have to forego a not inappreciable portion of their revenues in favour of the contractors, for which the Durbar get no direct or indirect return The mere fact that the practice of issuing such Parwanas has been in existence for some time should not be allowed to come in the way of its discontinuance" Then from the Resident (No 6867, dated 3rd November, 1908) "With reference to your letters . . . I have the honour to state that the concessions to exempt from duty supplies purchased for British troops situated within or close to the territories of Native States is not asked for as a right, but merely as an act of courtesy in favour of troops . " He appreciates the true position. Of course, the difficulty about making concessions of that kind is that, as we saw in the letter in the other case from the Government of India, a concession made *ex gratia* if continued for any length of time is regarded by the Government of India as the foundation of a prescriptive right Then the Resident writes in 1913 (No. 4403/146-13, dated 14th August, 1913)—I imagine the Durbar granted some courtesy for that last one—"With my letter . . . . I send you a copy of the Parwana issued by me in favour of" —another contractor—"of the Mhow Cantonment authorising to export 1,000 sheep, free of Customs duty, during 1913-14, from the Gwalior territory round Mhow, and asked you to inform the local Subahs concerned with a view to avoid any possible difficulties the contractor might meet with 2 The Officer in Charge of Supplies, Mhow, has sent me the enclosed petition from the contractor representing that whenever he sends his men to purchase sheep in the Gwalior State free of duty on the authority of the Parwana granted to him, the State officials recover duty from his men in spite of the Parwana being shown to them. The contractor further states that the State officials do not respect the Parwana on the ground that it is from the Resident and not from the Durbar" I venture to submit, a very proper frame of mind of the State officials. "3 The Officer has, therefore, asked me to move the Durbar to issue instructions to all the Subahs informing them of the grant of the Parwana to the meat contractor in order to avoid further difficulties 4 The Officer in Charge of Supplies has also sent me two enclosed receipts for Rs. 18-2-0 recovered

from the contractor, and has claimed a refund of the said amount. 5. If the facts stated in paragraph 2 of this letter are true, I shall feel highly obliged by your kindly letting me know whether the intimation about the grant of Parwana to the contractor by me was given to the local Subahs concerned, and if so, why was the sum of Rs 18-2-0 referred to in paragraph 4 recovered from the contractor's men. 6. I would also request you to send me, at an early date, the amount of Rs. 18-2-0 claimed by the contractor for transmission to the Officer in Charge of Supplies." That is in answer to a letter, we do not know what was said in the letter, but you see in 1908 the Durbar state this is a matter of courtesy; in 1913, you see the Resident here treating it obviously as a matter of right. Then from the Gwalior Durbar (No. 5288, dated 21st March, 1914) (Exhibit 6): "In this connection I would invite your kind attention to the marginally noted correspondence, and request that the time-honoured practice may not be disregarded and that applications for such Parwanas may, for the future, be made to the Durbar in the first instance This, it may be urged, would also be in consonance with the recognised principle, that the Durbar should be the only authority to issue such instructions to their officials." I am inclined to put it perfectly frankly. It appears they were bluffed into submitting and what they were trying to do was to save the semblance of sovereignty by asking for the privilege of signing their own exemptions The answer from the Resident (No. 1539, dated 24th March, 1914) is Exhibit 7. (2) "Although it appears that these Parwanas have up to now been issued by the Residency, I see no reason why the Durbar's request for a change of procedure in this respect shall not be given a fair trial." He does not seem to have the faintest glimmering of an idea that a question of State sovereignty is involved "3. In accordance with the request of the Officer in Charge of Supplies, Mhow, I was about to issue the enclosed Parwana, but in deference to the wishes of the Durbar I have postponed its issue and would request that a similar Parwana may now be issued by the Durbar and sent to me by 11 a.m on Saturday, the 28th instant, as after that I should have to issue one from the Residency. Please see that the local Subahs are duly informed of the issue of the Parwanas with a view to the avoidance of all difficulties 4 The only object in issuing these Parwanas from the Residency seems, ordinarily, to be to avoid delay, and so long as the Durbar treat such requests for Parwanas as urgent, the Residency would refrain from issuing them" That consideration does not arise in this case.

Exhibit 8 from the Resident (No. 46, dated 7th January, 1914). This is an earlier date than the last letter because it relates to another instance. Those were all meat supplies, this is other matters "The Assistant Director of Grass Farms, 5th Mhow (Division), has informed me that, owing to scarcity at Nasirabad, he is compelled to send 14 lac lbs. of Government grass which has been harvested departmentally from leased lands, to Nasirabad for use of Government animals there 2 He states that as other States in Central India and Rajputana have been good enough to exempt Government grass from Customs duty, he hopes the Gwalior Durbar will be pleased to do the same. He has, therefore, asked me to obtain the Durbar's permission to this hay being exempted from export duty. 3. If the Durbar are pleased to exempt

the hay from payment of export duty, I hope orders will also be issued for the refund of any duty already paid 4 An early answer will oblige." Note the second sentence there. He states that "As other States in Central India and Rajputana have been good enough to exempt Government grass from customs duty, he hopes the Gwalior Durbar will be pleased to do the same." All the States have to pay British India Customs duties and there has never been any suggestion from British India that it would be an act of grace to exempt the States from the operation of the customs duties Why should this demand be put forward? It is not fair, Sir, to ask individual States in this way to make these concessions Why should they make them? The way in which the request is put here is typical, I have seen many cases of a request put in this way, "As certain other States have agreed to do it, will you please agree to it." That is a very, very dangerous form of request in circumstances such as have characterised negotiations between the Government and the States, namely, the absolute isolation of each State There is no means of the States communicating with each other to see whether the statement is correct or to some extent misleading or, in fact, absolutely incorrect They are told that this is so, they are told in effect· "You will be in disgrace if you do not do what the others do, you had better do it" It is typical of the kind of uncomfortable circumstances in which the States have lived I say nothing as to what was necessary in the past, 100 years ago, it is not relevant to what we are doing to-day, but as applied to modern times I venture to submit that it is relevant, this is 1914.

Well, then, the next one, Exhibit 8 (a) is the same year This is from the Resident, Gwalior, to the Political Member, Gwalior Durbar (No 1392, dated 15th March, 1914). "I am desired to inform you that the Manager, Government Military Dairy, Mhow, intends purchasing 12,000,000 lbs of Bhoosa from the Gwalior State territory in the vicinity of Mhow for the use of animals of the Dairy, and has asked to be furnished with a Parwana from the Gwalior Durbar allowing its exportation free of duty 2 Should there be no objection, I shall be obliged if the Durbar will kindly comply with the wishes of the Manager of the Dairy and furnish me at an early date the required Parwana for transmission to him"

This is another one, Exhibit 9 (No 1985, dated 16th April, 1914). "The Assistant Director of Supplies, 5th (Mhow) Division, has written to point out that a contractor who exported grain from Pichor to Jhansi for the use of the Imperial troops stationed there, has been charged export duty on the consignment at the Durbar Naka" Naka is a Customs post, is it not?

Secretary. A Customs post

Sir Leslie Scott "I shall be glad to learn whether in view of the correspondence which took place and with reference to the last letter on the subject, viz, Residency letter No 2681/268-12, dated the 27th May, 1912, the Durbar proposes to extend to the supplies for the troops in the neighbouring cantonment of Jhansi the same custom as to exemption from payments of dues as has been observed with respect to other cantonments which are situated either in Durbar territory or close to its borders." Some people to whom is given an inch ask for

an ell I do not know how far Pichor is from Jhansi; it is comparatively near another part of the State of Gwalior.

Exhibit 10 (No. 7124, dated 25th June, 1914). The Durbar at last turned round and said definitely they would not; ". . . . I have the honour to state that the Durbar regret they cannot extend to Jhansi or any other cantonment the suggested exemption from Customs duty partly because that cantonment is on an entirely different footing from Goona, Agar, and Mhow, and partly because the requirements of Jhansi are quite easily obtainable from the Mandis of Bina, Bamora and Kethora"—all British territory. "But apart from that the Durbar venture to think that a concession like the suggested one is capable of very wide extension in course of time from analogy, and the growing force of precedent and usage, and therefore for the sake of the subsistence of present arrangements in regard to exemptions such as they are, the Durbar hope they will not be pressed to consider favourably the proposition which has been advanced." That, Sir, is the end of that case, and the two obviously go together.

Jasdan is the next one, page 206; we have almost finished this first heading which is one of the longest. This is quite a different type of case from the last two; it is a case of denial to a State of its ancient rights without any justification, the denial taking the form of a compulsory classification of its jurisdictional powers. You know the State of Jasdan, Sir, of 283 square miles and 30,000 population, a small State but a substantial State; it is the senior Kathi State of Kathiawar. It is ancient in origin, having been acquired by the Ruling Family by conquest in the 15th Century; it was formed and established long before the foundation of the Moghul Empire Neither the Moghuls nor the Marathas had acquired or exercised any authority over the Kathiawar Rulers beyond the annual money payment (Mulukgiri) recovered by the Marathas by force of arms. These States, including Jasdan, were then, as before, entirely independent in their rights both of internal sovereignty and of external relations There was not the slightest interference in their administration or with their privileges and powers The States retained unimpaired their full sovereinty and dominion We have got here put together in rather a convenient form the set of quotations affecting the status and powers of these Kathiawar States which might have come under another heading, but it has been put under this first heading, denial of sovereignty, and although this is a small State I want you just to look through those various quotations as applying to the whole of the Kathiawar States. That is their relevance. Would you kindly look at Exhibit "A" on page 208? This is a report by Colonel Jacob to the Bombay Government dated 4th October, 1842 He was the Agent for Kathiawar at that time. "The establishment of the various tribes in the Peninsula was founded on the sword . . . . the tenure on which all the Chiefs hold their possessions is that of absolute sovereignty over, and property in the soil. Whatever may be thought of this question as refers to the ancient Hindu principle of the sovereign's claim, here he is the Lord of the soil. He bequeaths portions to his sons for their maintenance, or to religious characters in charity or ostentation. . . . . In this respect the tenure is alike in the oldest and most recent of the Ruling tribes" (*Vide* Selections from Records of Bombay Government, Vol 39, 1893-94 Edition, pages 185-186)

Exhibit "B" is a reference to Colonel Walker's report, one of the earlier reports, 14th March, 1804, in paragraph 3 of which he says that "with the reservation of their acknowledged tributary payments, the Kathiawar States are independent and at liberty to form connections with other powers They are under no obligation of service and neither the Peshwa nor the Gaekwar pretend to exercise any authority in Kathiawar beyond the demand of their respective contributions" (*Vide* Walker's Report, page 45.) That is interesting as affecting, for instance, all those Bihar and Orissa States and the Central Provinces States It is a definite statement by Colonel Walker, who knew more about the Mahratta troops than probably anyone else, of the fact that they exacted the tribute with their military excursions and never sought to control the internal sovereignty of the State, or, indeed, the external sovereignty either He goes on in a later report, 20th July, 1806, paragraph 49: "From every information which has reached me it would appear that the different Chieftains of Kathiawar have maintained under the different resolutions of the Government of this country, the same character and the same degree of personal independence" Paragraph 50 "Except in the payment of their Jamabandhi"—that is tribute—"the Chiefs, such as Rajahs, Thakores and Girassias, were in possession and exercise of every interior right of sovereignty" Paragraph 58 "The powers of these several ranks may be illustrated in the present condition of the authority of the Bhavnagar Rajah and of his situation in the pargana of Ghogha. The power of life and death and administration of justice within their respective villages are possessed by all and it was never thought necessary to make any reference to the authority of the superior Government residing at the Kasba of the pargana in order to obtain leave for the punishment of or to avert the effects of having punished a criminal or disobedient rayat" Paragraph 59: "And also in the event of crime against Government being committed it was usual to demand of the Girassias, whose rayat might have committed the act, that he should take the necessary measures for punishing the same" Paragraph 60 "In respect to exterior relations, they appear to have exercised the same freedom The external interests of such petty States could not have extended far, and may be supposed confined in great measure to their own neighbourhood, but they enjoyed the right of peace and war with each other, they formed such connection as might be necessary for the extension and security of their commerce, they built fortifications and maintained troops Nor does it appear that any of the States to whom they paid tribute ever interfered in their transactions, whether foreign or domestic, so long as they were not inimical to themselves" (*Vide* Walker's Report, page 31)

In 1808, Colonel Walker, after he had finished his settlement, as you remember, paragraph 14 of his Report, dated 15th May, 1808, said "These Princes have for centuries either maintained or regained their territories from the oppressions of the several dynasties which have reigned in Hindustan, and no sovereignty yet established in this country has been sufficient to reduce them to subjection, or to obtain from the tract they inhabit a regular portion of the produce of the soil Paragraph 15 The uniform resistance which the Rajput States have exhibited to the encroachments of every foreign nation has saved them from entire subjection and their obstinate opposition, sometimes

co-operating with interest and intrigue, has caused temporary accommodation. The conquerors of Hindustan have often found it more to their immediate advantage to accept a pecuniary compensation, instead of prosecuting a doubtful contest to extremity (*vide* Walker's Report, page 181).

Sir James Carnac, Resident of Baroda, says in Report dated July, 1814 (paragraph 4): "As far as history or tradition can be adduced as evidence it is my opinion that both will prove the Chieftains of the Peninsula of Kathiawar to have always been in respect of their municipal economy perfectly independent of the powers which have successively enjoyed the supremacy in Gujerat, the utmost of their submission being the payment (when exacted by the presence of an army) of tribute to obtain the forbearance of a power whose good will it was an object to conciliate, because the consequences if its enmity were to be feared." (*vide* Vallabhdas Resolutions, Vol IV, page 1).

Hamilton in his statistical account of Hindustan referring to the Peshwa's attempt in 1814 to interfere in Kathiawar says "in 1814 when the lease of Ahmedabad expired and the farm was restored to the Peshwa, he deputed officers to take charge, whose conduct was in the highest degree unjustifiable. He also attempted to establish a right of interference in the concern of the Peninsula Chiefs which on general principles of policy could not be permitted, these Chiefs having for ages past maintained their internal independence No sovereigns of Hindustan had ever reduced them to subjection or drawn from their territories a regular portion of the produce of their soil, they having invariably found it more advantageous to accept pecuniary compensation than to prosecute a doubtful contest to extremities. On these grounds the British Government opposed every attempt on the part of the Peshwa to introduce a greater degree of authority in Kathiawar than he had prior to the treaty of Bassein and the settlement of the Kathiawar Tribute. The tribute in lieu of the Mulakgiri claims (to prevent invasions) on the Kathiawar Chieftains having been fixed in perpetuity and while they continue to fulfil the arrangements they had contracted, the British Government was pledged to secure to them the privileges they had derived from their ancestors" (*vide* Vallabhdas Resolutions, Vol IV, page 2). That is the important passage

The Government of Bombay in their letter dated the 10th February, 1815, addressed to the Resident at Baroda says: "Neither His Highness the Gaekwar nor the British Government has any right of interference in the internal affairs of the Nawanagar or any other principality in Kathiawar unless its interposition be expressly solicited by the Chieftains of the territory."

In Exhibit "C" there is a quotation from Aitchison, Volume VI, page 177: "When therefore the British Government associated itself with the Gaekwar in enforcing the rights of the Gaekwar in Kathiawar, it placed before itself two objects to be attained; first, the maintenance of tranquility in the country and second the commutation of the variable and generally increasing collections made by the Gaekwar to a fixed money payment to be made annually without the necessity of the periodical advances of an army. Further than this it was not proposed to interfere with the right and powers formerly enjoyed by the Chiefs and landholders or the rights of the Gaekwar."

The Government of Bombay in their despatch to the Court of Directors dated the 23rd November, 1825, dealing with the constitutional position of Kathiawar say (*vide* Privy Council Judgment reported in Vol. VIII of the Bombay Law Reporter, pages 153-163): "In our management of Kathiawar it has been our policy to abstain as far as possible from all interference in the internal administration of the petty States, to leave the Chiefs not only independent, but to encourage them to secure that independence: their power and responsibility by a just and faithful administration of their affairs . . . The nature of our control in Kathiawar is said to consist 'not so much in the exercise of our own power as stimulating the chiefs to the exercise of theirs within their limits and in insisting on their so governing and controlling their dependents as to prevent the peace of the country being affected from any inattention to this object on their part or to those responsibilities being so disregarded as to occasion internal confusion and disorder.' "

The Court of Directors in their despatch, dated the 20th July, 1830, to the Government of Bombay, said: "All the rights which we possess in Kathiawar, we acquired from the Peshwa and the Gaekwar, from the former by conquest and from the latter by mutual arrangement. The rights we considered as limited to the exaction of a tribute with the power of taking such measures as might be essential to the security of that tribute" There you get the formal views of the Court of Directors of the Company writing from London "Beyond this we did not propose to interfere and we determined to treat the Kathiawar tributaries as independent chieftains entitled to the uncontrolled exercise of the power of Government within their own territories and subject only to the obligation of not molesting our subjects, our allies, or one another, and of paying the stipulated tribute to the Gaekwar or ourselves" (*vide* Vol. VIII, Bombay Law Reporter, page 163)

Then in 1831 the Government of Bombay wrote to the Commissioner of Gujerat (Letter No. 549, dated 19th December, 1831): "On our first interference in 1807-08 Lieutenant-Colonel Walker promulgated by an address to the chiefs, the objects we had in view, and proclaimed that this was confined to the settlement of the regular payment of their tribute, that no encroachment on their landed rights or their independence was contemplated, and that the state of possession and power as it then existed was to be guaranteed, and at the same time both the British and Gaekwar Governments concurred in the policy of abstaining from a spirit of aggrandizement and from every encroachment on the rights or possessions of the Chiefs On the faith of these assurances the Chiefs entered into measures suggested to them by agreeing to pay a fixed sum annually as hitherto and also passed a security bond to abstain from any violent attacks on each other, to afford compensation each for the acts of his own subjects and for all injuries sustained by any Chief or any of his subjects, to be responsible for criminals taking shelter within his possessions, and also for preventing banditti passing their districts to plunder other territories We place ourselves as the guarantee between the several States for the due fulfilment of the above conditions and are therefore when appealed to, bound to enforce them" (*vide* Vallabhdas Resolutions, Vol IV, page 11, and also pages 402-3 of Col Wallace's "The Gaekwar and his relations with the British Government")

That is a very interesting set of quotations which deal with the whole of Kathiawar. I hesitate to read much more There are just one or two from Exhibit "D" and then I have finished. Sir Charles Wood, writing as Secretary of State in 1884 (Despatch, dated 31st August, 1864, *vide* Bombay Law Reporter, Vol. VIII, page 165) to the Government of India, intimated that "it is sufficient to say that the Chiefs of Kathiawar have received formal assurances from the British Government that their rights will be respected, and that the Home Government of India, so lately as 1858, repudiated the opinion that the Province of Kathiawar was British territory or its inhabitants British subjects. At the same time there is no doubt that the British Government have for a lengthened period exercised powers which are unquestionably of a sovereign character, with the full recognition and acquiescence of the Chief and people, and have interfered at all times when occasion required for the preservation of peace and maintenance of order." That is the dominant thing, if I may respectfully submit it, respecting our interference in independent States: the preservation of peace and maintenance of order. It is the question of security which is the crucial question in regard to that right. "But we have never exercised the right to apply our civil and criminal codes of procedure to Kathiawar, and whatever reforms we have introduced have been made in such a manner as to ensure the co-operation and support of Chiefs It has been our aim not to undermine their authority and independence nor to undertake the internal administration of the province. Her Majesty's Government have no desire to claim any more direct and formal sovereignty than has thus been exercised ever since our first connection with Kathiawar, nor to impose British laws and regulations on the Chiefs of the province"

In a further despatch, dated 16th December, 1864, Sir C. Wood referring to certain measures which had been lately introduced in Kathiawar by the Government of Bombay, observes that he has "no reason to believe that the objects which the Bombay Government have in view, may not be attained with the consent of the Chiefs by the exercise of a sound discretion and a conciliatory spirit on the part of the British officers employed in the country." He goes on to say "I am unwilling to reverse decisions which are being carried into effect and to direct sudden changes, when such course may weaken the authority of the local Government. I will not, therefore, prescribe the exact measures which should be resorted to for the withdrawal of the active and minute interference in the internal administration of Kathiawar, which has been introduced without sufficient authority and of which I cannot approve" (*Vide* Bombay Law Report, Vol. VIII, pages 165-166.) I need not read the rest, Sir Now what Jasdan complains of, what the Princes desire to call to your attention with regard to Jasdan, is that Jasdan till the classification by Colonel Keating in 1866 was a full-powered State, and that then she was put into the category of a third-class State. The Committee are all familiar with the classification no doubt, into seven different classes, the first class being those States which had the power of life and death over everybody within their borders, even subjects of other States, excluding Europeans; the second class was the same but not including the subjects of other States; the third class was a

slightly smaller jurisdiction, the fourth a little smaller, and then the fifth, sixth and seventh very much smaller. Provisions were made for the Courts, so called, of Kathiawar, being held by British officers as indicated in the quotations that I have given you, acting for and on behalf of the Princes of Kathiawar, exercising by their consent a jurisdiction delegated from them, not a British jurisdiction at all, and Jasdan calls in aid that principle expressed by Sir Charles Wood, as Secretary of State, that such steps taken for temporary purposes with the consent of the State must be treated as temporary, and that as soon as the conditions change and civilisation progresses and the administration of the State becomes good, then I submit *ex debito justitiæ*, as a matter of right, the State is entitled to say· "Your assistance is no longer wanted by me and I am entitled to act for myself, to have my own Courts and run my own Courts, have my own way;" and that is a matter of right as between the State and the Paramount Power. That is the case which Jasdan desires to make, and it is a case upon which I shall have to address to you a legal argument at a later stage I am now merely putting out to you the evidence and telling you what the case is—not arguing it.

Chairman: You do not anticipate that we are going to give any decision on that point, do you, because it is quite beyond our terms of reference to classify the States?

Sir Leslie Scott I entirely agree, but it is relevant in a matter that is within your jurisdiction. It comes up in connection with railways It is in connection with railways that certain very specific economic grievances arise, upon which you are asked to make recommendations, and it is a matter of principle which will have a direct bearing upon that. That is the context of it But it is also interesting as throwing light upon the relationship of Paramountcy

Chairman: As illustrative

Sir Leslie Scott· Yes, it throws light on it That is all there is to be said at this stage about Jasdan The State says very definitely, and it is put forward with the approval of the Standing Committee of the Chamber (page 208), that it is a very well-administered State now, and I daresay you know it

Then (page 212) I come to the State of Rewa There are a good many different illustrations from the State of Rewa, but this case can be taken fairly shortly, I think This is the last one that I am going to deal with to-day in the first head of our classification There are two I am going to ask you to postpone for a reason I will give Rewa is a State with a very special Treaty made in 1812 (*vide* Aitchison, Vol. V, page 239), because in that Treaty it is expressly provided that the Paramount Power shall not come inside the State to give it any help in case of internal danger and disorder The Clause in the Article of the Treaty is "The Rajah of Rewa being the acknowledged sovereign of his own dominions, the British Government will not consider itself entitled to take cognizance of any complaint which may be preferred to it by any of the relatives, subjects, or servants of the Rajah, who on his part shall not possess a claim to the aid of British troops for the support of his authority within the limits of his dominions" That is very interesting, and in direct contradistinction to nearly all the other Treaties It

speaks for itself. It would be thought that with such a full recognition of sovereignty as that contained in the Treaty of 1812 encroachments on the sovereignty of the State would be rare. But in fact the contrary is the case. To begin with, the tone of most of the communications received from the Government of India is not such as should be used in addressing a sovereign power, and most of the communications read like commands, whereas the Darbar, on the other hand, are expected and required to "submit" information. When in 1895 His late Highness Maharaja Sir Venkat Raman Singh, at the conclusion of his minority, assumed the reins of government, his judicial powers were restricted by the Government of India. This is a direct infringement of sovereignty, since full judicial powers are inherent in sovereignty; they may be delegated by the Sovereign, but they cannot be restricted by any outside power. It may be said that His late Highness accepted the conditions under which his powers were restricted, but such acceptance was a mere yielding to *force majeure*. It is not necessary to quote the correspondence at length, and one letter will suffice to show that His late Highness's powers were, in fact, so restricted That is Exhibit 2 on page 214 (No 1052 dated 29th April, 1898, from the Officiating Political Agent in Baghelkhand, Sutna, to the Secretary to His Highness the Maharaja of Rewa). "I have the honour to inform you that the Government of India, having learned with satisfaction that His Highness the Maharaja of Rewa has shown himself to be fitted for more extended criminal powers, are pleased, on the recommendation of the Agent to the Governor-General for Central India, to withdraw the temporary restriction imposed in 1895 under which His Highness was required to forward for the confirmation of the Agent to the Governor-General the proceedings in all criminal cases involving a sentence of death, or transportation, or imprisonment for life" That raises the question to which I referred on Tuesday, as to whether the Government of India has any power, as of right, on a minor ceasing to be a minor, and coming into so-called full powers, to restrict those full powers in accordance with any arbitrary discretion that the Government think right. I raise the question here as a pure question of right, and without discussion as to whether or not such restriction may, in certain cases, be desirable I will not repeat what I said the other day. You have it in mind, no doubt On the question of right, the point does serve to raise, in a very direct manner, the ultimate question as to what is the character of the paramountcy relationship. I will not argue it now, if you will kindly bear in mind that I regard it as a useful testing point.

Then as to interference with the sovereign discretion of the Sovereign of Rewa to do what he liked within his own territory. It is a question of grant of Jagirs, and so on You will see the words "*without full consideration and approval by the Agent to the Governor-General.*" (Extract from letter dated 7th September, 1903, from the Political Agent in Baghelkhand, Sutna, to the Secretary to His Highness the Maharaja of Rewa.) He is told that he is not entitled to do things without getting approval This language, let it be noted, is used to a Ruler enjoying sovereign powers within his own dominion eight years after the termination of his minority.

Then the question of revenue administration was another one upon which the Government exercised a control. That is worth looking at,

because it raises the Minority question (page 213). The Darbar considered that certain villages in the Maugunj Tehsil of the State had been settled in a manner both incorrect and unfair to the State,—that is to say, settled during the Minority—in that the holders had been recorded as possessing proprietary rights which they did not in fact possess This was a question for decision by the Sovereign Power through its Courts and officers without the intervention of any outside power, but in the course of correspondence which arose between the Darbar and the Agency, the Political Agent stated (Letter No. 2377, dated 23rd June, 1910), "I gather that proprietary rights were certainly granted to some, if not to all, of the holders of those villages, and it is doubtful whether any reduction of those rights is possible now, for the grant was sanctioned by the Superintendent during the Minority." That is indeed turning things upside down To suggest that it was outside the powers of the State to deal with it, because it had been done by the Superintendent during the Minority, I venture to submit is the very reverse of the way it ought to be looked at legally.

Colonel Peel. Might I just ask you a question about Minority Government? A Minority Government, I suppose, is entitled to govern?

Sir Leslie Scott Yes.

Colonel Peel Therefore, the things it does are just as valid as those done by any other Government?

Sir Leslie Scott. I entirely agree with that within certain limits Probably I should meet your view best by saying that I recognise that a State does not cease to be a State because its Ruler is a minor If the State has certain powers, as a State, then those powers are not lost by the fact that the Ruler is a minor They are not lost for this reason, and I suspect this may be a different point of view from that which you had in mind Under the constitution of each State, as under the constitution of England, if the Heir to the Throne is a minor, there is constitutional machinery by which the State can be carried on· there is the Regency with full powers If the Regency were carried on by the State in the ordinary way according to the constitutional law of the State, then these questions would not arise, I should entirely agree that you must assume that the State continues to have these full powers and that the government of the State by a Council of Regency during a Minority is just as much effective a Government as the Government by a Ruler of full age But if the British Government intervenes and takes charge of the administration and puts its own officers in to carry on the administration, then in my submission a number of other questions have to be asked Is the act one which, according to the law of the State, would be within the power of the Regency Council of the State to do during a Minority? You may very well find that there are limitations on the powers of a Council of Regency by the constitution of the State For instance, you might very well have a provision that no Council of Regency should have authority to cede three-fourths of the State to some other Power—something like that. I take an extreme case to illustrate the point If an agreement is made by the Council of

Regency under the order of the British officials, and the agreement is one which makes a cession to the British Government, then, for the reasons indicated in the Opinion, the British Government cannot take advantage of the action of its officers representing it during the Regency, because it is, as it were, a trustee, and is not entitled to make a benefit for itself within its trust There are various limiting considerations of that kind—upon which I propose to address you, Sirs, with some care—in a considered argument

Colonel Peel: I should have thought the only point was whether the Minority Government was properly appointed. The Political Agent is only saying that the Minority Government had made certain grants, and that it would be difficult to resume them He does not seem to have been laying stress on the character of the Minority Government

Sir Leslie Scott: It would be much less open to attack if it were, I agree with you on that, if it were merely a settlement by the Council of Regency without any British official concerned at all, then it would be subject to quite different considerations, but you have got to take into consideration the question as to whether the Paramount Power has any right to take over the administration of a State merely on account of a Minority.

Colonel Peel: That is quite another question; that is a question that depends on other considerations. The important question is, not whether the Minority Government as appointed did certain things which were legal or proper or not; the main point is whether the Paramount Power had the power or authority to make the appointment as it did. That is the point, is it not?

Sir Leslie Scott· I agree, without using epithets, that is the first point logically to consider, and it is one of the greatest importance, because *it goes to the root of everything; but even assuming that the* British Government has the right to come in, or that there are circumstances in any particular case where for some particular reason it had the right to come in—which I can conceive quite easily—still, when it is there administering the State it is the duty of the British Government to administer the State in the interest of the State and not in the interest of the British Government.

Colonel Peel· Yes, *but that is not a legal point, that is a point of* policy.

Sir Leslie Scott· In my submission it is a legal point also

Chairman: I submit that this sentence is conceived in the interests of the subjects who received those grants; that they having received the grants it would be very hard to revoke those grants seeing that the grants were sanctioned by the Superintendent during the Minority.

Sir Leslie Scott: I agree, Sir, up to a point with what you have said, if I heard you correctly. Would you just look back for a moment? "The Darbar considered that certain villages had been settled in a manner incorrect and unfair to the State in that the holders had been recorded as possessing proprietary rights which they did not in fact possess." That is the ground of complaint, and what the State or the Ruler with full powers is saying is this. "When I was

a minor you came in, took control, and gave away rights of property to all these people who were not entitled to it at all. That was a thing you had no right to do."

Colonel Peel: Not in the interests of the Paramount Power.

Chairman: It has nothing to do with the Paramount Power; it was in relation to an ordinary act of administration of the State That is how I read it.

Sir Leslie Scott: That is the ground upon which the objection is taken in the first instance. Then it is justified by the Political Agent, who says it must be right because it was done by the Superintendent during the Minority.

Chairman: Well, he does not say that, does he? He says it is doubtful whether any reduction of these rights is possible now that those rights have been given to the subjects of the State, that they may have been rightly given or wrongly given but they were given by the properly constituted authority at the time, and it would be very hard on the subjects of the State That is how I read it

Professor Holdsworth I reason that way too

Chairman. They may have been wrongly given, but it does not so appear

Professor Holdsworth: You cannot rip up every land settlement during the Minority merely because you think it is wrong

Sir Leslie Scott: Obviously

Professor Holdsworth· That is the point

Chairman: However, your point is that this is an illustration of action during a Minority which was not in the interests of the State, because it objected to it afterwards.

Sir Leslie Scott: Yes Of course, it comes in incidentally in that form It goes in, firstly, as an interference by the British Government with the action of the Ruler when he has got full powers, in dealing with what the Ruler himself thought was wrong action taken at an earlier stage. He finds these holders, whoever they are, claiming proprietary rights and he says. "You are not entitled to them," and they apparently go to the Agent, the Resident, or somebody, and complain, and then the British Government takes the point and interferes with his action. In the first place, it is an interference with his sovereignty; whether he is doing right or whether he is doing wrong, it is an interference, and the fact—even if it had been a fact—that he was not right in the view that he took, would be no ground for interference. That is the first point, and that is the point that is relevant to this head in the classification

Then I pointed out, incidentally, that there was a Minority point which related to A (a) vii of our classification and the point I made there was that proprietary rights belonging to the State had been given away by the British when they were administering the State because of the Minority, and I said that that was not a justification for it, as was said by the Resident or Political Agent

Sirs, I have here, if I may say so respectfully, a message of some importance. Sir Prabhashankar Pattani sends me a message He

wishes to explain. Sir Prabhashankar Pattani is administering the State of Bhavnagar during a Minority. He has much knowledge of these matters.

Sir Prabhashankar Pattani: May I be permitted to address the Committee?

Chairman: Certainly.

Sir Prabhashankar Pattani: The Government of India have recognised the principle that, during Minority administrations, the Administration shall not make any new grants nor shall they revoke any grants made by former Rulers The Ruler of the State, being a Sovereign Ruler, can give away any grant; an Administrator, being a Trustee, cannot have that authority, and if he gives away a grant it can be revoked by the Ruler when he comes of age. The Ruler of a State is a Sovereign Ruler and he can resume a grant, even given by his own predecessor, because of his being Sovereign.

Chairman: Then there can be no grievance if the action done can be rectified at once.

Colonel Peel: You do not advocate that grants which have been given by any Government should be resumed at the arbitrary will of the next Sovereign?

Sir Prabhashankar Pattani. It applies both ways If the grant is arbitrarily given away by the Administrator, it is but right that the successor should resume it

Secretary: No one can give any grants nowadays during Minority administrations. It is forbidden by Government orders

Sir Prabhashankar Pattani: This principle has been accepted by the Government. That strengthens the point that Sir Leslie Scott is advocating.

Sir Leslie Scott: I should like to add a word upon the point raised by Colonel Peel just now. The whole subject of grants and the resumption of grants of landed interests under Indian Law, I think, is one that is not very easy for English lawyers or English men of business to follow. It is something analogous as far as I can judge to our old principle of tenancy at will in a different context

It is that the person receiving the grant knows from the start that he has, to use a lawyer's expression, "a precarious tenure" and I believe that principle of the State being able to resume grants has been regarded as very important and has been approved of by the Government of India as an important principle in order to prevent the gradual giving away of the territory of a State to such a degree as to reduce its revenue to a point at which the administration cannot be carried on effectively. So one has to approach that subject in quite a different way from the English lawyer who is horrified, as I confess I was, when I first read about resumptions, with the idea of conveying property to a man and then taking it back, which is probably what struck you just now.

Colonel Peel: What struck me was this, no matter what the legal position may be or the correct position as regards one claim, if a majority of the people are persuaded that their grants are wrongfully

resumed it might easily cause circumstances to compel the interference of the paramount power with consequences very unpleasant for the State.

Sir Leslie Scott: No question of that kind is suggested here.

Colonel Peel: No, but it might be the result.

Sir Leslie Scott: It is a question of opinion on that, Sir. This particular point I think may be put very shortly. The Ruler was exercising a customary right of the State to resume certain grants *ex hypothesi*. He complains that the British Government interfered with him in doing so, what he thought was right. Whether it was right or whether it was wrong it was an interference with him in the exercise of the right. Then he is told he cannot exercise the right. Why? Because in this particular case the Superintendent, the British Officer, had made the grant and that that was a reason why it should not be a resumable grant. The sting is the implied denial of the power of the sovereign ruler to correct mistakes made during the minority because what had been done had been done by a British officer. That is the point.

Colonel Peel: It is in dispute as to exactly what is meant by these powers. The whole position as regards the minority grants has been changed by the recent practice of the Government of India

Sir Leslie Scott I will deal with that separately, but when I said that that was what was felt in regard to the words I italicised here I was speaking on instruction as to it being the view of the Maharaja of Rewa to-day.

Colonel Peel: I quite agree in the view you take, but there might also be another view of the letter.

Sir Leslie Scott: We have not got the full details sufficiently to go into it, but that is the view taken by the State very strongly, that it was exercising an ordinary right of sovereignty and was interfered with and told it could not, not because the grant was irresumable in its essential nature, but because it had been made by a British officer when he was administrator I shall be dealing with the question of minority, of course, separately.

The right to raise armed forces for protection and security is one of the first attributes of Sovereignty without this right, Sovereignty can scarcely be said to exist Moreover, in the case of Rewa, this right is also a treaty obligation, for the "aid of British Troops for the support of his authority within the limits of his dominions" is denied to the Maharaja of Rewa It is incumbent on him, therefore, to maintain a force sufficient for the preservation of law and order and internal security generally within his borders Of the size of this force he is, by nature, the best judge, and as the "acknowledged Sovereign of his own dominions" he must be the sole judge Yet the Government of India again and again objected to any increase in the numbers of the State Army In 1903 the Political Agent in Baghelkhand writes (Letter No 2919 dated 25th August, 1903) "Any further increase whatever in the Rewa State Army ... will be regarded with disapproval by the Government of India" Another letter (No 1966 dated 19th June, 1908), "I may add that the increase in the State Army has attracted the attention of the Government of India and that they have called for an explanation as to how the

increase has arisen." Again as late as 1913, the Political Agent writes (No. 9.C. dated 18th April, 1913), "The change amounts to a serious disregard of the wishes of Government as communicated to you in my predecessor's confidential letter."

These three letters have been quoted as containing words having a direct bearing on the question at issue, but it has to be remembered that a Return of the armed forces of the State was required annually, and that every change in the numbers, however small, had to be accompanied by a full explanation Nor was this interference limited to the question of numbers. When His Highness wished to render his artillery more efficient by replacing the bullock teams by horses his request was at first peremptorily refused (No. 91 C. dated 17th November, 1903, from Political Agent). "Major Daly (the Agent to the Governor-General in Central India) is unable to regard with approval the reconstitution of the Rewa artillery which you have suggested." Permission was subsequently granted on the condition that horses would be placed at the disposal of the Government of India on mobilisation Later His Highness wished to replace the antiquated and expensive elephant teams of his other battery. This was again at first peremptorily refused (No 27.C dated 2nd November, 1910, from Political Agent). "In the circumstances, and in the absence of any special reasons, the Government of India regret that they are unable to accede to Your Highness's request" Subsequently this request was also acceded to, on account of the saving effected, and on the understanding that there would be no increase of men or material, and that the horses would be at the disposal of the Government of India in the event of mobilisation Closely connected with this is the question of the manufacture of cannon (surely an attribute of Sovereignty). The Government of India refused to allow the manufacture of cannon by the State, and at the same time refused to supply modern artillery, but this will be documented in its proper place One more instance may be given in conclusion. In the course of a letter dated 8th March, 1905 (which is too long and deals with too many questions to be quoted *in extenso*), the Political Agent, in informing the Maharaja of Rewa that he is about to submit a Report on the administration of Rewa—an action in itself perhaps not consistent with the position of the State under the Treaty of 1812—writes "As regards the army, I shall report that it seems to be far in excess of what is required or is necessary, and it follows that all superfluous expenditure upon Military establishments is unprofitable." All this, it is urged, constitutes a case of encroachment on Sovereignty.

Colonel Peel: Do you also maintain that interference with resumption of grants is encroachment on sovereignty?

Sir Leslie Scott: Yes, in this case I can conceive a case where it would not of course.

Colonel Peel: This is based on a Treaty that British troops are not to go into this State to support the Maharaja?

Sir Leslie Scott: On the type of increases that the sovereign of Rewa wanted. Let me answer your question by putting a hypothetical case. Supposing a State started making preparations which could not possibly be regarded as compatible with anything but a hostile intention, then I should concede at once that the agreement of paramountcy by which the foreign relations of the State were handed over to the

Crown and given up by the State was one which implied that the State was not to arm itself for a foreign offensive, where you get a limit there.

Colonel Peel: How would you construe this Treaty of friendship and defensive alliance concluded between the British Government and the Raja Jay Singh Deo Raja of Rewa and Mookundpore 1812? Article 3 of that Treaty. Supposing the State fell into disorder, and there was grave misrule there.

Sir Leslie Scott: The Crown would be entitled, as paramount power, to intervene, because it would be a danger to neighbouring States.

Colonel Peel: It would be a breach of that Treaty?

Sir Leslie Scott: If it got to the point of its being a menace to neighbouring States, or neighbouring British India

Colonel Peel: It would still be an infringement of this clause of the Treaty?

Sir Leslie Scott. It would be the exercise of a right arising from another provision

Colonel Peel: Yes, quite

Sir Leslie Scott. This Treaty is a "Treaty of friendship and defensive alliance concluded between the British Government and the Raja Jay Singh Deo Raja of Rewa and Mookundpore" Article 1 deals with its relations with a foreign power, and then there is an undertaking by the Raja to commit no aggressions on any other party, and to leave to arbitration any disputes with other States

Colonel Peel: Yes, but this is not on other States, this is internal. It says here "consequent act." "The Rajah of Rewa being the acknowledged sovereign of his own dominions, the British Government will not consider itself entitled to take cognizance of any complaint which may be preferred to it by any of the relations, subjects, or servants of the Rajah, who on his part shall not possess a claim to the aid of British troops for the support of his authority within the limits of his dominions" I am supposing a case arising owing to the misgovernment of the subjects of the State

Sir Leslie Scott. I will give that question consideration, and answer it after considering it It is obviously a difficult question. It seemed it would arise on this Treaty, just because it is different from the other Treaties I should prefer to give a considered answer because it may affect the State of Rewa. If the Committee would allow me to postpone that answer I will deal with it later The interest of the question was this, that it seems to exclude one of the ordinary terms of the agreement of paramountcy.

Professor Holdsworth· If I may say so it seems to argue the agreement of paramountcy is something else than what you have described it I do not want to argue that point now

Sir Leslie Scott· That view I will duly consider

Professor Holdsworth· Is the agreement of paramountcy to be found in any one document?

Sir Leslie Scott· Are you putting a question to me as to whether it is?

Professor Holdsworth: Or is it to be implied from conduct?

Sir Leslie Scott: In my view it is implied. As a matter of fact I have seen a good many Treaties which contain practically the whole of it.

Professor Holdsworth: Yes, it is rather like a divisional contract I suppose.

Sir Leslie Scott. You find no sign of the agreement of paramountcy in the early Treaties The agreement of paramountcy dates from round about the second decade of the 19th Century. Look at that group of Treaties which were made about 1818 after the Mahratta power had been broken and when the new policy was being applied. You find there plain evidence of the paramountcy agreement being accepted generally.

Professor Holdsworth: But supposing you get a State with which there is no treaty or no treaty extant, where does the agreement of paramountcy come in then? Is that simply implied or conveyed?

Sir Leslie Scott: You find it very clearly indicated in the Walker settlement of 1808 which was to last for ten years, and then it was extended, and in the Treaties with Baroda and the Peshwa till the Peshwa was crushed—the Treaty of Baroda of 1817 and the Treaty of Baroda of 1820, if I remember rightly. Take that group from 1808 to 1820, that group of agreements affecting that part of the world You see that the terms upon which the arrangement was made were essentially the paramountcy terms Those passages that I read from the Jasdan case to-day illustrate it in a very interesting way, showing that the possession of power of all these States was guaranteed by the British Crown; they undertook not to make war on each other and they undertook to leave everything external to themselves practically to the Paramount Power, to the British, and if you look into that I think you will see there that you can read between the lines of all these various things the very essence of the paramountcy agreement as laid down in our Opinion.

Professor Holdsworth: You think you can imply a paramountcy agreement in the case of all the existing Native States in India?

Sir Leslie Scott: Certainly, and the same agreement has been made with all. That is the general view expressed in that Opinion

Professor Holdsworth: I know, yes.

Sir Leslie Scott: This particular Rewa treaty is extraordinarily interesting because it was made just at the transition from the equality type of treaty which you got down to 1805, to the paramountcy type of treaty that you get in 1818. It is just halfway between the two, and you get this very curious sort of halfway house in the form of this treaty. I should prefer to consider that particular treaty in relation to paramountcy before I answer any questions about it, because it is a difficult question upon which I do not care to give an unconsidered answer.

Professor Holdsworth: Well, we will consider it later.

Sir Leslie Scott: May I very respectfully ask the Committee, if they could, to read the introduction, historical and economical, rather carefully. It is, I believe, a very valuable document

Minutes of the Evidence given before the Indian States Committee at Montagu House, Whitehall, S.W.1.

Monday, 22nd October, 1928, at 3.30 p.m.

PRESENT:

Sir HARCOURT BUTLER, G.C.S.I., G.C.I.E., *Chairman.*

Colonel the Honourable SIDNEY C. PEEL, D.S.O.

Professor W. S. HOLDSWORTH, K.C.

Lieutenant-Colonel G. D. OGILVIE, C.I.E., *Secretary.*

Their Highnesses the MAHARAJA of KASHMIR, the NAWAB of BHOPAL and the MAHARAJA of NAWANAGAR.

The Right Honourable SIR LESLIE SCOTT, K.C., M.P., appeared on behalf of the Standing Committee of the Chamber of Princes.

Sir Leslie Scott: The Committee will remember that at the last Sitting I was dealing with the case of Rewa, and there were one or two questions put to me by the Committee on the subject of the intervention of the Political Agent to prevent the Ruler from upsetting a decision by the Superintendent given during a Minority, and I want, if you will allow me, just to say a word or two on that point with a view to making the position a little clearer than it was when we left it on Thursday (page 213). The Durbar considered that certain villages in the Maugunj Tehsil of the State had been settled in a manner both incorrect and unfair to the State, in that the holders had been recorded as possessing proprietary rights which they did not in fact possess. This was a question for decision by the Sovereign power through its Courts and officers without the intervention of any outside power, but in the course of correspondence which arose between the Durbar and the Agency, the Political Agent stated (Letter No. 2377 dated 23rd June, 1910). "I gather that proprietary rights were certainly granted to some if not to all of the holders of those villages and it is doubtful whether any reduction of those rights is possible now, for the grant was sanctioned by the Superintendent during the Minority."

Sir, the point that arose in the discussion between the Committee and myself and Sir Prabhashankar Pattani was, as I understood it, in connection with the contention that the interference of the Political Agent to prevent a re-examination of the title of these holders was illegal. That was the contention I was putting forward. Colonel Peel made two suggestions interrogatively. I am not suggesting, Colonel Peel will understand, that he was expressing any considered opinion, he was merely putting questions to me. Firstly, that inasmuch as the title in question had been determined by the Superintendent of the State during the Minority Administration, it was, therefore, the act of the Government of the State at the time of such administration,

and it was right to insist that such an act should not be upset. The second point was that the refusal to allow the Maharaja to re-examine the titles of the holders to-day was justified as being covered by the Paramountcy Agreement; for it was conceivable that the deprivation of proprietary rights once conferred by competent authority, namely, the *de jure* Government of Minority period, might lead to a rising in the State which in its turn might further lead to the disturbance of peace, thus giving the Paramount Power the right and duty of intervention

I want, if I may, to deal with these two points on the facts of the case. I assume for the purpose of answering these two points that the act of the Council of Administration or the Superintendent during the Minority was as good in law as the act of a full power ruler himself, but even a full power ruler may have his decision revised by a subsequent ruler, and on the facts of this case indicated in the print it is to be observed that what had happened during the minority was a revenue settlement which had been carried out, and under it certain holders had been recorded as possessing proprietary rights. You, Sir, the Chairman, are familiar and will check me in what I am saying. In British India I understand legislation has been passed particularly in connection with the Zemindary System by which holders under Zemindars are given what are called proprietary rights in certain cases. We should call it in this country security of tenure. I think it is the same sort of idea. In this State the system was not the Zemindar System but the Ryotwari System So that there is no farmer of the State revenues between the State and the holders of the land; the State is in direct contractual relationship with the holders of the land, and the settlement made is as between the State and the holder, as to the revenue payable out of the rent. If you want that corroborated Major Colvin, who is here, will tell you that that is so. In this case, on the Ruler of the State attaining his majority and assuming his power, he thought that some cultivators had been recorded on the previous settlement erroneously, as having proprietary rights, and raised the question. He wanted further investigation to see what their rights were.

Now, Sir, it is submitted that he would be entitled necessarily to have a further investigation to see whether the records had been correctly entered and on that investigation it might turn out that their title would be re-affirmed or that it would be dis-affirmed. In that case they would have a right of appeal in the ordinary way in the State The Political Agent who intervened to prevent the investigation seems to have assumed that the result of the Inquiry would be adverse to the holders, but my submission, Sir, was, and is, that he had no right to intervene. By the grant of property rights during the previous settlement to those holders a decision had been given adverse to the State by which the State lost revenue, and my submission is that the State was absolutely entitled to look into the question as to whether a decision had been rightly given or not.

The second point that I desired to make was that the intervention seemed to have been based, not upon the contention that what was being done was necessarily illegal, but upon the fact that the previous decision had been given not merely by the ordinary authority of the State, but by the authority of the British Superintendent when he was

in charge and it was that particular attitude which, so to speak, was the sting which was so much felt by the State on that occasion, and the relevance of it to your Inquiry, of course, was the double point, (1) that there was no right to interfere, and (2) that it was wrong to try and put the British officer in a position of prestige superior to that of the State itself. Those were the two points.

As regards the second question raised by Colonel Peel, as to a possible justification of the intervention on the ground that security was imperilled, I venture to submit that on the actual facts of the case that could not possibly be so. The question only related to certain villages in one sub-district of the State and related to some holders in these villages.

I venture to submit that the hypothesis of a possible rising because of an adverse decision, against which they could appeal in the ordinary way in the Courts of the State, is imaginary, and has no reality on the facts of the case. I did not understand Colonel Peel as suggesting that that was the case there, but all that he suggested was that it might be the case in some circumstances. These are the additional observations that I desired to make upon that passage

Professor Holdsworth May I ask a question for my own information? Supposing there had been a revenue settlement as you describe, and no minority, would it have been open to the Ruler of the State, on discovering that there had been an error, to re-open it?

Sir Leslie Scott: Certainly, it is done habitually

Professor Holdsworth. So that the minority question does not affect it very much?

Sir Leslie Scott· Not at all I think The only relevance of the minority point was, that it was because of the minority that the Superintendent was in a position to give the order

Professor Holdsworth· Because he was acting?

Sir Leslie Scott But for that he would not have been there at all The Superintendent was the man who was appointed by the British Government to conduct the minority He was exercising the powers of the Ruler That was the position

Professor Holdsworth I see.

Sir Leslie Scott. Will Colonel Peel allow me to put the question to him, if that explains the view that I desire to put to the Committee?

Colonel Peel I see your meaning quite plainly, I think

Sir Leslie Scott· I am obliged

Then, Sir, the next point is the Rewa Case relating to the Imperial Service Troops (page 226) This is an illustration of the way in which pressure is brought upon a State, particularly upon the Ruler of the State personally to compel him to consent to doing something that he does not want to do I venture, very respectfully, to submit that it was done by Lord Curzon just in the way in which it ought not to be done In April, 1904, Lord Curzon, who desired to re-organise and extend the Imperial Service Troops, addressed a Kharita to His late Highness, among others, inviting his views on the subject Towards the end of the Kharita Lord Curzon remarked "Even more urgently do I request that you will repay the confidence which I have reposed

in you by this communication by equal candour in reply. I would sooner receive an unfavourable response than one which did not represent the real feelings of the writer, or in which they were so disguised as to convey an erroneous impression." There are only one or two passages in a long and interesting letter which I want to mention. Lord Curzon refers at the beginning of the letter to this: "In 1889 was started the Scheme of Imperial Service Troops, or contributions made by certain of the Indian Chiefs to the common defence of the Empire. This scheme arose out of voluntary offers," and so on. Then the next paragraph: "*The principles underlying the offer and acceptance of Imperial Service Troops were these: The contingents were in* each case the spontaneous and unsolicited offer of the Chiefs." Then paragraph 9: "There have been some among them"—that is referring to the Princes—"who have proceeded further and have pressed emphatically for a more thorough and uniform recognition of the principle of obligation for Imperial Defence by a minimum contribution from all States proportionate to their revenues for this purpose; and 10 per cent. of the gross revenues of the States has been suggested as a suitable figure" Then paragraph 10· "Subject to these qualifications, the principle that has been suggested seems to me one that is well worthy of examination It rests upon the unassailable proposition that the Chiefs and peoples of the Native States profit equally with the inhabitants of British India by the protection accorded to them by the British Government, and in the last resort by British arms, that the interests of these States and of the British Government are absolutely identical, and that there is no reason in equity why the people of British India should support the whole, or, at any rate, by far the greater part of a charge that is equally applicable to all" Pausing there for a moment, the letter conveys the Viceregal impression, that the States are not contributing to the defence of India *in proportion to their population as compared with that of* British India, and proportionately to British India they ought to contribute more The appeal was based upon that consideration. In the economic review contained in the introduction which was handed to you, you will find, as you will remember, a very interesting analysis of the liabilities and contributions of the States in regard to defence; and the result of that analysis is to show that the States are overpaying their share of the defence of India to a very great extent. I do not think that that has ever been really dealt with till that Memorandum was prepared by Colonel Haksar. You will no doubt take your own ways of having that Memorandum checked, but, if it be even approximately true, it reveals the extraordinarily interesting and significant position that the contribution of the States is greatly out of proportion, on any conceivable theory, to the contribution which they ought, in fairness, by comparison with British India, to be making This letter is interesting because you find that misconception of the position expressed even in the Viceroy's own letter Then paragraph 13: "The first question, therefore, that I submit for consideration, is, whether the Princes of India are or are not of opinion that some such principle as that which has been mentioned is worthy of acceptance, namely, whether a Chief should acknowledge the obligation—subject to the conditions which I have named—of expending a certain proportion of his gross revenue, and, if so, what proportion

in furthering the cause of Imperial defence." We are right up against a question of fact of the greatest public importance Then paragraph 19: "The second proposal is that in every State furnishing Imperial Service Troops a Reserve should be formed of men who have passed through the ranks, and who should be kept in the State as a nucleus." That is the Reserve. Then the next paragraph (20) says. "These are the suggestions which I submit confidentially for Your Highness's consideration. I beg that you will think them over carefully, and discuss them in confidence, both with your own advisers, and with the Political Officer attached to your State" Then you have the sentence which I read to you about asking for a candid reply He goes on "In the present matter, as in all my previous relations with the Indian Chiefs, I desire to treat them as my allies and co-adjutors in the task of Imperial Administration, and to carry with me their unfettered consent I regard it as a privilege to consult them in such a matter, and I feel confident that it will be in a similar spirit that they will respond" Will you please notice particularly that phrase "unfettered consent" His Highness of Rewa duly responded (29th August, 1904) with candour In the first paragraph he says he responds in a frank spirit. Then in paragraph 4, he says, "As to the share of contribution to Imperial Exchequer, I, as a Chief, may be allowed to say, on behalf of my subjects, that they have not been wholly free from it They pay their share of salt customs, and such other duties, and stand in the same relation as the rest of the Empire in all concerns of trade, commerce, and traffic Most of the States themselves make direct payments to Government, or contributions in other shape Moreover, it appears to me that the Native States form a network of barriers" and so on Then in paragraph 9 he says "For the above reasons, I venture to think that Native States do contribute in some shape or other towards the defence of the Empire, and that the existing relations should not be interfered with They have stood the trial of a century and mutual trust and confidence have steadily grown, and anything having the faintest appearance of disturbing their relations should, in my humble opinion, be avoided I would therefore make no change in the character of the system under which the Imperial Service Troops are raised The Chiefs should be at liberty, as at present, to offer such Troops or not, as may suit them If a Chief makes any offer it should be accepted if, in the opinion of the Government, the State is in a position to bear the burden In other words, these offers should continue to be spontaneous in their origin and voluntary in their character" Major Colvin is here, and he will tell you, if you like to ask him personally, or perhaps you may accept his words from my lips, as he told me only an hour ago, when I asked him about it, that what was in the mind of His Highness of Rewa on this occasion was this His State paid no tribute, indeed was extraordinarily free under its Treaty of 1812, and that he regarded this request by Lord Curzon as something tantamount to accepting a permanent position of tributary His view was that if the Government asked for troops, asked for revenue, he would give it with both hands, give his State with both hands on the personal request by the King, as a matter of sheer loyalty, but that he did not want to be put in the position of his State being treated

by the Sovereign as a tributary. It is a conceivable position with which you may sympathise or not, but it was an intelligible position and that was the reason of his answer, and he says at the end "I have commenced and ended my letter in the frank and candid spirit in which we were so earnestly invited to respond."

If this had been all that had happened, there would have been little need to present this case. But that is very far from having been the case. Lord Curzon himself, when he visited Rewa in—1903 is the date put here but I suspect it should be 1905—urged the matter on His late Highness and gave him "advice" which he undoubtedly expected to be taken; and Mr. Bayley (the Agent to the Governor-General in Central India) writing to His late Highness after the visit (reference not quoted), said: "As regards the Imperial Service Troops, the Viceroy evidently feels very strongly that in a movement of the kind, the head of the great Baghel clan and the Ruler of the principal Rajput State in Central India should not be left unrepresented. Up to the present time the two great Mahratta States and the only important Mohammadan State have maintained regiments, while the Rajputs, unlike their brethren in Rajputana, have failed to come forward. The loyalty of the Baghels is happily beyond doubt but I cannot help feeling that it is to be wished that some tangible evidence of their attachment to the Empire were presented to the World Your Highness has in the past made generous and whole-hearted offers of assistance to the Government of India but valuable as such offers are, as showing Your Highness's good will, they are of little practical use unless they take a form in which it is possible for Government to accept them. I cannot but fear that the day may come when such offers may be regarded merely as expressions of lip loyalty and less warmly received than one would wish His Excellency the Viceroy, I believe, mentioned this view of the case to you and I am sure that you will give it very full and careful consideration. I shall perhaps fail in my duty as a sincere friend to you if I did not remind you that the occasions on which a Viceroy personally discusses matters of this kind with a Ruling Chief are rare and that such discussions are restricted to matters which the Head of the Government of India really considers to be of importance to the State concerned *and it is certainly the case that a Chief who disregards advice so given to him takes upon himself a very serious responsibility.*"

Nor was this all, for the Political Agent writing about the same time (reference not quoted), forwards the gist of a letter from the Deputy Secretary, Foreign and Political Department, expressing the views of His Excellency the Viceroy. This letter, while pressing for participation in the movement, goes on to say: "Though, of course, you would be expected to make corresponding reductions in your present troops" thereby urging an unwelcome scheme, and at the same time using the occasion for a further tilt at the numbers of the Rewa Army, which is looked upon as an infringement of the Rewa Treaty and an encroachment on the Sovereignty of its Ruler.

At a later date the Political Agent wrote to His late Highness (reference not quoted) informing him that Colonel Barr (a former Political Agent) had passed through Sutna after seeing Lord Curzon in Calcutta, and that Colonel Barr had said that "the Viceroy had

spoken about the matter of your unwillingness to give Imperial Service Troops though *advised* to do so by His Excellency in person, and had spoken in such a way as to leave no doubt on Colonel Barr's mind that he (the Viceroy) is considerably displeased with Your Highness in the matter." These remarks were communicated by the "direction" of the Agent to the Governor-General in Central India "in the hope that they may have some good effect" Not content with this, the Agent to the Governor-General in Central India followed it up with a letter from himself (reference not quoted), the last paragraph of which may be quoted, "In writing thus to Your Highness my only desire is to indicate clearly how matters stand at present, and to do what I can to prevent any disappointment in future In the past, Your Highness has always been forward to offer the services of your Troops, whenever any opportunity presented itself In view of the events which are now in progress in the Far East, there is no saying how soon the time may not come when Chiefs who desire to do something for the Empire will be able to make offers that Government will be in a position to accept In the circumstances I feel it my duty to warn you plainly that the present condition of Your Highness's Troops is such that there is no advantage in your offering to place them at the disposal of Government"

Pressure of this sort, it is urged, is illegitimate and wrong, and any agreements entered into by Princes after the application of such pressure should be considered as attained by undue influence and given under duress Would you mind looking at Exhibit "A", This is a letter from the Political Agent to His Highness (dated 15th April, 1903): "As we drove away from Rewa on the 12th, His Excellency the Viceroy said to me that he sincerely hoped that Your Highness would not disregard the advice given by him to you personally regarding the advisability of offering to maintain Imperial Service Troops His Excellency said, that when the Viceroy personally talks to a Chief as he did to you, and gives him serious advice, it is neither right nor wise for the Chief to disregard such advice You will never be *ordered* or even officially requested to give Imperial Service Troops, but I can assure Your Highness that to offer such Troops will now be in your own best interests All the reasons which you bring forward against such a course were fully explained by me to Mr C S Bayley, to whom I showed your accounts proving that your Military expenditure has not increased really since 1895 Mr Bayley explained the whole case to the Viceroy and showed him the letter which you had written to me The Viceroy then discussed the whole matter with Mr Bayley and myself here, what the Viceroy's views are Your Highness has heard from His Excellency's own lips, and those views will not be altered or modified If Imperial Service Troops are offered and successfully maintained, Your Highness can see, from the case of other Chiefs, what benefits can be expected Military rank, visits to the Court in England, the personal friendship of the King and Royal family, and appointments on His Majesty's personal staff These distinctions have come to other Chiefs through having given Imperial Service Troops On the other hand, if Your Highness cannot see the way to offering any such Troops, it is I fear certain that your protestations of loyalty and anxiety to help the Government of India in

times of war, will lose a great deal of their value, and will, perhaps, not be as gratefully acknowledged in the future as they have been in the past I trust you will think well over these matters and that the result will be satisfactory."

That is what the Government of India regards as the unfettered consent of a Ruler which is being asked for! My submission, Sir, is that that kind of treatment is utterly inconsistent with the fundamental relationship that ought to exist between the States and the Crown, and that it is a gross departure from the spirit of the Royal Proclamations.

Chairman: You refer, Sir Leslie Scott, to these accounts or figures —they do not claim to be really anything more than a shot—contained in this Introduction.

Sir Leslie Scott: Yes, Sir, in the second part of the Introduction.

Chairman: I understand the request of the Introduction to be that some expert bodies should be appointed which would work out direct figures and discuss the questions which are raised in this Memorandum.

Sir Leslie Scott: Hereafter.

Chairman: Hereafter.

Sir Leslie Scott: Of course, it is not contemplated that that can be done before you report. We merely recognise that it is impossible to make assertions about figures of such complexity without the most careful examination, and that for that purpose both expert examiners and investigators are necessary, and also a complete disclosure of all records and documents and accounts so that the States may see them. Of course, it is a body which should be appointed by co-operation between the Government and the States, with mutual disclosure on both sides, so that it can be a whole-hearted and sympathetic investigation.

The chapters in question are those numbered 2 to 5 I think you will agree that they are an interesting presentation of the case and raise some very important issues.

Then I want to ask the consent of the Committee to my postponement of the case of the Sangli State and the case of the Simla Hill States under this first head A (a) i till a later stage. I assure you that you will not suffer inconvenience from doing that because, as regards the Simla Hill States, the Maharaja of Patiala is anxious to be present when their case is being dealt with, and, as you know, Sir, he is at the present time staying with the King of Spain in Madrid for a few days; he will be back next week.

I therefore go, Sir, to the second head of the evidence under your Inquiry, that is A (a) ii, which is the appropriation by the Crown of Sovereign rights belonging to States, which we have divided into two categories for convenience, the first one being over defined areas within the State and the second being over defined classes of persons. Under the first heading, questions of Railway jurisdiction, jurisdiction in Cantonments and Agencies, Residencies, Police lines and so on, arise. There are certain cases where rights have been assumed by the Crown in a particular district or territory of a State.

I think it is probably convenient to begin with the Railway cases and, for that purpose, I would ask you to go first to a pair of cases

which I propose to take together, because to a great extent they are identical, two Phulkian States, Patiala and Jind; the third of those States is the State of Nabha, which is under an administration at the present time, and I have not the details of that State. I think probably we shall find the records of that State are identical with those of Patiala and Jind I begin with Patiala and I am going through the case and will then refer you to one or two additional documents in the Jind case, otherwise you may treat the two cases as identical. I am afraid it is rather a long case and not a perfectly easy one to follow because there are many stages of it and there are many documents, but I am bound to say to the Committee that I regard it as a very important case because it throws a flood of light on this whole question of the assumption by the Crown of railway jurisdiction, and with the assumption of the railway jurisdiction proper, as understood in the earlier cessions, namely, the Civil and Criminal jurisdiction of the Courts with the police powers accompanying it, the assumption of general rights of sovereignty. It therefore illustrates a point which I desire to bring very much to the mind of the Committee and keep before the mind of the Committee, namely, the growth of the claims of the Crown over a period of years You will see that illustrated in this case very clearly The other railway cases it will be possible to take quite shortly because the principles come out in this one I was going to quote you, before I began this, a passage from Piggott on consular jurisdiction and extraterritorial jurisdiction generally I will leave it for the moment and deal with that at the end; but, broadly speaking, will you accept this as my statement of the law, which, of course, you will check extraterritorial jurisdiction in a governed country—a country that has an effective government of its own—only arises through the consent of the sovereign of that country Where a foreign sovereign is allowed to exercise a jurisdiction in the country, he does it because the sovereign of the country allows him to do so, and the limits of the jurisdiction are circumscribed by the terms of the consent That was the principle that was expressed, as Professor Holdsworth will remember, in the Hyderabad case of Yusuf-ud-Din I do not know whether you have had an opportunity of looking at that case since the last sitting?

Professor Holdsworth No I have looked at it before I will look at it again if you like but I have seen it before

Sir Leslie Scott You will remember that what happened was that a man who had committed an offence in the north of India went to Hyderabad and was arrested in a station in Hyderabad by the railway police He took the point that the cession to Hyderabad of jurisdiction over the railway land did not authorise his arrest for an offence not committed on the railway land or in connection with the railway, and the Privy Council said he was right. Lord Halsbury said (Indian Appeals, Vol 24, page 145) · "The authority to execute any criminal process must be derived in some way or other from the sovereign of the territory, and the only authority relied on here is the authority given in the correspondence, which constitutes the cession by the Nizam of jurisdiction to the British Government. It is important to observe that the notification"—that is a notification issued under the Foreign Jurisdiction Act of India, equivalent to an Order

Under such circumstances it is proper that in case of both the parties being British subjects, disputes between them may be settled by Railway Authorities, but if any party out of them is a subject of Patiala Government, or belongs to any of the three classes, the matter will be decided jointly by the Railway Authorities and such Officer as may be deputed there for such purposes. If any party is dissatisfied with the decision, an appeal against the same will be heard by the Patiala Government. Well, now, Section 3 of the Orders of the Foreign Minister relates to disputes arising outside the Railway limits and there the Patiala State demands exclusive jurisdiction That is how it was left. So that there is no cession there, Sir, of jurisdiction. I understand from Mr Rushbrook Williams that, for nearly 20 years, the State continued to exercise jurisdiction in the Railway lines of the North Western Railway. Then we come on to the year 1883, nearly 20 years later (Parwana dated 14th September, 1883 from the Under-Secretary to the Government of Punjab). "His Honour the Lieutenant-Governor, Punjab, desires me to write to you about cession of full jurisdiction over such lands belonging to Patiala State as have been acquired for the Rewari Ferozepore State Railway."—There was, again, a minority at this time Perhaps you would just make a note of that, Sir.—"You are asked to request the Patiala Durbar that full jurisdiction should be ceded to the British Government in respect of these lands along with those plots which have been acquired for Railway Stations, Railway buildings and other Railway purposes." Then the answer from the State (dated 12th June, 1884), is Exhibit A (3). "With reference to Parwana No 244, dated 14th September, 1883, received from your Honour and orders"—(Note the word "orders")—"issued subsequently regarding the cession of full jurisdiction over such lands belonging to Patiala State as have been acquired for the Rewari Ferozepore Railway line, Railway Stations, Railway buildings and other Railway purposes, I beg respectfully to address the British Government on behalf of the Patiala Government as desired by the Ahalkars of the State With a view to secure the goodwill of the British Government, the Patiala Darbar are prepared to cede all jurisdiction required by the Government under the provisions of Railway Act for the management of Railway lines, together with powers concerning the convenience of persons residing permanently within Railway limits as Railway employees" This sentence is very important: "Because until the ability and efficiency of Judicial Officers and legal procedure and the judgment of officials of Indian States reach the standard observed in British Indian Courts, it does not seem unreasonable for the British Government to exercise jurisdiction in cases involving questions of principles relating to such railways as belong to the Government" He indicates both the reason and the extent of the cession they were making "Under all such circumstances, however, when our Courts, which under the protection of the British Government are progressing, will reach the standard of efficiency of the British Indian Courts, then of course we shall be able to ask respectfully the [illegible] to kindly rely on us and allow cases relating to [illegible]lways [illegible] residing within railway limits to be heard b[illegible] [illegible] way in which they are heard by the Co[illegible] British India on the basis of their place of [illegible] and to [illegible] our Courts as if they were their own dist[illegible] the [illegible]

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in Council issued here—"upon which the learned judges in India appear to have relied could itself give no such authority. Even if in more extensive terms than in fact are included in the notification which had purported to give jurisdiction, as the stream can rise no higher than its source, that notification can only give authority to the extent to which the sovereign of the territory (the Nizam) has permitted the British Government to make that notification" I will not read any more at this stage because I do not want to argue the question now, but that is the principle

The Crown, therefore, because of that principle, has no right to order a cession of jurisdiction. Secondly, Sir, the cession of civil and criminal jurisdiction over railway land, shortly stated, gives competence to British Courts to hear cases arising within the railway limits and no others. It, in addition, gives authority I think, as a matter of interpretation of the document, to the British Government to have railway police for the purpose of making the criminal jurisdiction effective It probably also authorises the judges of the Courts so established to decide in accordance with British-Indian law. It confers, on the other hand, no sovereign powers of government of any other kind, either to legislate or to impose taxation or to conduct the executive government of the territory. I am prepared to concede that a cession of jurisdiction of the kind means necessarily an exclusive jurisdiction, so that there would not at the same time in the railway land be a set of courts of the State having the same jurisdiction, so that the same offence or the same civil action could be brought either before a Court of the State or before the British Court. I think it means an exclusive jurisdiction For obvious practical reasons I think you must so interpret it. But those, in my submission, are the limits of the ordinary cesser of civil and criminal jurisdiction. The fundamental thing to bear in mind is: (1) that such a cession must be voluntary and cannot be compelled, (2) that it is limited to those powers and does not confer general sovereign rights. You will see in the course of the Patiala case how it began with that and how the Crown subsequently assumed to itself powers for all practical purposes of complete sovereignty, treating the territory as British territory and not as Patiala territory; and that is what we submit is fundamentally wrong

Now will you look at page 459; the sanad or treaty of 1860, which is at page 201 of Volume VIII of Aitchison, contained a clause, No. 9. "On the occasion of the construction and repairs of roads in his territory *the Maharaja Sahib Bahadur will in accordance with the written* communication of the Commissioner Sahib Bahadur, arrange from his own territory, through Kardars and officials of Parganas, according to former custom, for the materials required, on payment." You see this relates to railways "And at the time of the construction of a railroad or other roads, the Maharaja Sahib Bahadur will concede, free of charge, land that comes under the roads in the same way as he has done for the Imperial road." For the Imperial road he gave land and nothing else; materials were to be paid for and there was no grant of jurisdiction The precedent of the Imperial *road is made the test of what is to be done in the event of railways* being constructed In that same treaty there is a clause by which the Government undertook not to interfere with the internal management of the State Now the first railway that passed through the

Patiala State territories was what is now the main North Western line from Ambala to Ludhiana. That obviously was a strategic line of first-class importance. The next railway that I shall refer to is the Ferozepore Rewari Railway.

Secretary: There is no direct line from Ferozepore to Rewari. From Bhatinda to Hissar and Rewari the line is metre gauge. From Ferozepore to Bhatinda is the main broad gauge line. Do not you mean the one that goes from Ferozepore through Bhatinda and Jind down to Delhi?

Sir Leslie Scott: Yes.

Secretary: You do not want the Rewari one, because that does not go through Patiala territory at all.

Sir Leslie Scott: It is the one which goes a substantial distance through; it is the one which was made in 1883 or thereabouts

Secretary: That is the Southern Punjab, that is the only one that is in the southern part of the State for any distance.

Sir Leslie Scott: The third one that came on the tapis was the Rajpura-Patiala first and then the extension to Bhatinda That, you will observe, is in the State of Patiala nearly the whole length Then there is the north and south line through Dhuri and Ludhiana The first one was the North-Western trunk line

(Page 459) The first railway line which passed through Patiala State territories was the Delhi Sindh Punjab railway This was opened in the year 1869-1870 and subsequently became the main line of the North-Western Railway. This line intersected the State territories at three places between Ambala and Ludhiana and jurisdiction over all these places in respect of all matters remained with the Patiala State for a very long time I want you to bear in mind, Gentlemen, the fact that in the case of Patiala, although a cession had been made, the exercise of the jurisdiction was left with the State for many years in regard to several lines The earliest correspondence on this subject is interesting and important The Agent, Cis Sutlej States, sent a Murasilla dated 27th June, 1864 referring to several points in connection with the cession of land for railway construction and other matters specially relating to jurisdiction This was replied to by the Foreign Minister (27th June, 1864), after a very full discussion of the matter with all the high officials In brief, lands were agreed to be ceded in accordance with Clause 9 of the Treaty, but in matters of jurisdiction full rights were reserved to the State The State even expressed a wish to build the line at its own expense In actual practice also the State Courts heard all cases including those concerning railway employees In matters relating to railway the State Courts were directed to follow the Railway Act There was no reference from or to the Imperial Government in the matter

This arrangement continued for a long time, and more railway lines passing through Patiala territory were constructed The Rewari Ferozepore Railway was constructed in the year 1881-1882, the Delhi Ambala Kalka Railway 1888-1889, the Southern Punjab Railway 1894-1895, the Narwana Kaithal branch of the above, 1896-1899, the Jodhpur Bikaner Railway 1899 1900, the Dhuri Jakhal Railway 1900-1901, the Kalka Simla Railway [illegible]

Jurisdiction of all kinds over State lands occupied by these railways remained without question with the Patiala State. It was in the year 1883 that the Punjab Government wrote to the Patiala Motamid at Lahore (dated 14th September, 1883), desiring the State to cede to the British Government all jurisdiction over railway lands on the Rewari Ferozepur State Railway A clear and well reasoned document (dated 12th June, 1884), was sent in reply to this letter. That was in June, 1864, when there was in fact a Minority. My submission in regard to a Minority—I will not argue it—is that the Crown has no right during a Minority when it is in charge of the State to take from the State any cession which alters the State's rights I do not want to argue it now because it will be much more convenient to the Committee for me to argue the whole thing together. Mr. Rushbrook Williams kindly corrects me there, Sir I was under a false impression I thought in 1864 there was a British official in charge of the Regency. I understand there was not What the arrangement was I will look into in detail, but I was under a misapprehension, so will you kindly strike that out. On page 470 is the letter (No 349 dated 20th February, 1864), forwarded to that State from the Financial Commissioner asking for the cession of land for the construction of railway lines and saying this.—

"1 That His Highness the Maharaja Scindia and Chiefs of Bundelkhand have agreed to the terms noted below:—

"(a) That Government Officers will exercise full powers in the management of the land, which together with its adjacent plots will be granted on perpetual lease to the Government, rent free, for the construction of railway lines, buildings, and other railway purposes"

That is management, not jurisdiction or sovereignty, at all.

"(b) Anyone who will reside within the said railway limits, whether he may be a British subject or a subject of Indian States, has to abide by the orders of the railway authorities, or officers appointed by the Government, and the said officers will hear all cases occurring within railway limits"

That is jurisdiction

"(c) All disputes arising between railway officers and subjects of Indian States will be heard by the Political Officer concerned"

That is civil jurisdiction.

"2 His Majesty's Government agree with the Government of the N.W. Provinces in the proposal that land required as a temporary measure may also be acquired from Indian States on the condition that if it is given rent free it will be restored to them when no longer required"

Sir, it is a long time ago, and therefore I do not pause on it very much, but that statement made by the Financial Commissioner in that letter that the Maharaja Scindia and Chiefs of Bundelkhand had agreed to the terms noted below was untrue. If you look at Aitchison you will find that Scindia did not make any agreement till the 25th June, 1864 There had been a discussion in the previous December, but the agreement was not executed by him until June, 1864, and it did not contain those clauses It was a particular agreement, amounting to an absolute cession of territory with sovereignty; something quite

different. Secondly, as regard the Chiefs of Bundelkhand, they made a cession in 1863, expressed to be by injunction of the A.G.G and the Political Agent, giving up the entire government of the District, and that was the year after they had been in very serious trouble with the Government *It is obvious that that was due to an order.* It is expressed in Aitchison to be by the injunction of the A.G.G. as a matter of history. No railway whatever was built through the Bundelkhand States till about 1888, and then there were only three cessions of civil and criminal jurisdiction in the strict sense of the word, and nothing more. I mention that as an illustration of the kind of way in which Indian States, in their isolation, have been at the mercy of officials, who have made inaccurate statements to them about other States having agreed to certain courses It shows that the system of isolation is bound to lead to abuses.

Then the details of that original arrangement of 1864 appear in Exhibit A(1), and I am afraid I must ask you just to look at them. This document is the "Orders of the Foreign Minister of Patiala" after conferences within the State with the various officials of the State, there being at that time this Regency Council It was agreed that the railway should be constructed at the cost of the State and you will find that Patiala always wanted to construct it at its own cost with the express purpose of keeping control over its own lines, but they were willing to give the land rent free, subject to the boundaries of the land being fixed so that other land wanted in the future might be paid for

Patiala's reply is that as regards jurisdiction over the land in criminal cases it should rest with the officers of the Patiala State on the following grounds which are very sound and reasonable First of all the example of the road Secondly, the question of management being given into the hands of British Officers is quite an additional term not provided in the Sanad dated 5th May, 1860 Thirdly, the day when the Authorities of the British Government wrote down in the agreement the term of acquisition of rent free land from this Government, there was no talk between the parties about ceding of criminal jurisdiction over the land marked for Railway line, nor was any term regarding criminal jurisdiction being given along with the land settled in writing in the agreement Hence in view of the friendly relations with the Authorities of British Government criminal jurisdiction over the land within Railway limits should rest with the Patiala Government Officials Then the demand of the Government (Section 2 of the Orders of the Foreign Minister), is "Whosoever will settle within the said Railway limits, be he a British subject or subject of any Indian State, will have to abide by the orders of Railway Officers or such Officers as are appointed by the British Government, while these Officers will hear the cases occurring within the Railway limits" The answer is that anyone who settles within the Railway limits will be either —

(a) British subject settling as such, or

(b) Subject of Patiala Government who may settle within the Railway limits,

(c) Any person who is subject of Patiala Government but settles within the said land as a servant of Railway or as a Railway employee.

Under such circumstances it is proper that in case of both the parties being British subjects, disputes between them may be settled by Railway Authorities, but if any party out of them is a subject of Patiala Government, or belongs to any of the three classes, the matter will be decided jointly by the Railway Authorities and such Officer as may be deputed there for such purposes. If any party is dissatisfied with the decision, an appeal against the same will be heard by the Patiala Government. Well, now, Section 3 of the Orders of the Foreign Minister relates to disputes arising outside the Railway limits and there the Patiala State demands exclusive jurisdiction. That is how it was left. So that there is no cession there, Sir, of jurisdiction. I understand from Mr. Rushbrook Williams that, for nearly 20 years, the State continued to exercise jurisdiction in the Railway lines of the North Western Railway. Then we come on to the year 1883, nearly 20 years later (Parwana dated 14th September, 1883 from the Under-Secretary to the Government of Punjab). " His Honour the Lieutenant-Governor, Punjab, desires me to write to you about cession of full jurisdiction over such lands belonging to Patiala State as have been acquired for the Rewari Ferozepore State Railway."—There was, again, a minority at this time. Perhaps you would just make a note of that, Sir.—" You are asked to request the Patiala Durbar that full jurisdiction should be ceded to the British Government in respect of these lands along with those plots which have been acquired for Railway Stations, Railway buildings and other Railway purposes." Then the answer from the State (dated 12th June, 1884), is Exhibit A (3). " With reference to Parwana No 244, dated 14th September, 1883, received from your Honour and orders "—(Note the word " orders ")—" issued subequently regarding the cession of full jurisdiction over such lands belonging to Patiala State as have been acquired for the Rewari Ferozepore Railway line, Railway Stations, Railway buildings and other Railway purposes, I beg respectfully to address the British Government on behalf of the Patiala Government as desired by the Ahalkars of the State With a view to secure the goodwill of the British Government, the Patiala Darbar are prepared to cede all jurisdiction required by the Government under the provisions of Railway Act for the management of Railway lines, together with powers concerning the convenience of persons residing permanently within Railway limits as Railway employees " This sentence is very important. " Because until the ability and efficiency of Judicial Officers and legal procedure and the judgment of officials of Indian States reach the standard observed in British Indian Courts, it does not seem unreasonble for the British Government to exercise jurisdiction in cases involving questions of principles relating to such railways as belong to the Government." He indicates both the reason and the extent of the cession they were making " Under all such circumstances, however, when our Courts, which under the protection of the British Government are progressing, will reach the standard of efficiency of the British Indian Courts, then of course we shall be able to ask respectfully the Government to kindly rely on us, and allow cases relating to railways and persons residing within railway limits to be heard by our Courts in the same way in which they are heard by the Courts in different districts of British India on the basis of their place of occurrence, and to consider our Courts as if they were their own district Courts for the purposes

of such cases." You observe there that that is expressly to be a temporary cession of jurisdiction until the Courts of the State had reached the standard of British Courts in British India. "As, however, circumstances are at present somewhat different, we cannot make a request like this just now, but we have thorough confidence and sincere trust in the British Government, and believe that they desire the cession of jurisdiction in Railway cases by Indian States in their favour only to such extent as is really necessary They do not mean to acquire unnecessarily from Indian States such powers within their territory as are not beneficial to the interests of the Railway, or which may cause unnecessary expense and difficulties in the exercise of powers, and in the criminal administration of the States Hence, it seems proper to lay before your Honour some of the points which are worth consideration For instance, in the case of full jurisdiction, the result may be that if any person commits a most heinous offence in the State territory and enters railway limits, the State police cannot arrest him at once, and the offender can have a chance during the time to escape by travelling to some distant place. While, in some cases where the man is a British subject and commits an offence in the State territory, he is in the present circumstances prosecuted in the territory of the State where *prima facie* evidence is easily obtainable It is not necessary for the State officials to correspond with the Government officials in such cases It will now"—that means in the future—"be difficult to arrest culprits in the first instance, if we take the words 'full jurisdiction' into practice Even if arrest is made, the offender will have to be surrendered to us after furnishing cursory evidence against him In case he claims to be a British subject, it will have to be argued whether or not he is so If it is proved on all sides that he is a British subject, the State officials will have to file a plaint or a complaint against him in the capacity of an ordinary plaintiff. The Authorities have enough experience of all difficulties which arise in presenting witnesses and producing evidence which are not a secret to them Besides this, however troublesome it is that while the subjects of Indian States would gradually have full knowledge of the fact that the land within the railway wire fencing is foreign territory, and that the State Authorities cannot in any way interfere inside it, the number of cases of disturbing criminal administration will in future increase because the subjects of the State are not yet aware of the total cession to the Government of the State jurisdiction over their lands for all purposes The other point remaining to be dealt with, namely, the acceptance of such proposal by some of the States having set a precedent to others, raises several issues worth consideration of the Authorities"

I pause there for a moment. You see what the State Authorities are saying. If you give to the words "Full jurisdiction" the sense of jurisdiction over everything you are going to put us in very great practical difficulties, and they are objecting " . To be brief, the object is that whatever powers the Government considers to be essential are offered to them as stated above, while such of them as interfere with the management of the State and are in no way beneficial to the Government, but go against the just and statesmanlike aims and objects of the Government, may be left to be exercised by the State as hithertofore" There is the measure of the State's consent.

The answer (No 284 dated 20th May, 1886) is a very important one *because it affected* all subsequent correspondence. The Government did their best to minimise the effect of the required cession. The third paragraph is—"The Lieutenant-Governor desires me to say, that although jurisdiction has been granted in similar cases by all the large States in India through which a British railway passes, no difficulties of the kind referred to have arisen with them, and it is not anticipated that they will arise in Patiala. The cession of full jurisdiction need not in any way affect the question of extradition. The State is not asked to cede its sovereign rights in the land, but only that full jurisdiction which is necessary to enable British Courts to take cognisance of matters that occur on the line."—I gave an illustration of that kind before and I will not go into that—"The lands occupied by the railway will remain Patiala territory and Patiala subjects taking *refuge therein do not become British subjects, and are not released* from any liability they may incur to the Patiala State for offences committed by them in Patiala territory." I made a mistake in introducing this letter. I treated it as the answer to the previous one. It is the answer but it is two years later. They took two years to send the answer—from 1884 to 1886 Paragraph 3 is really of very great importance throughout this correspondence. First of all, it is made perfectly plain that there will be no question of extradition proceedings and of *primâ facie* evidence, but if an offence is committed in the Patiala States and the Patiala police ask for the surrender of the man from the railway premises he will be given up without any process. That is the first thing. That is one of the practical things that the States urge throughout all these railway cases. Secondly, the only *jurisdiction that is wanted is the full jurisdiction necessary to enable* British Courts to take cognisance of matters that occur on the line That is in connection with the traffic and no more. Then paragraph 4· "The cession of jurisdiction would not be asked for if it had not been found from experience absolutely necessary that there should be one authority capable of dealing with everything that occurs on the railway throughout its entire length, and that authority can obviously only be the British Government." The States entirely deny any such necessity. They do not agree at all that it is necessary and they say this to you Take Europe where there are a number of small countries each with its own jurisdiction for all purposes and the railway goes right across them. There may be cases where the distance traversed by the line over a State is so small that uniformity of jurisdiction is necessary, but as a general proposition they deny it altogether. They say, as a matter of fact, the jurisdiction was left with Patiala itself for a very long time, and there are still States which exercise the jurisdiction. There cannot be any universal necessity on Imperial grounds as is put forward in some of these letters. It is quite easy to find a case—you have only to look at the map here—where you get a length of railway going across a number of small pieces of States and of British territory, all intermixed, and it is perfectly clear that the identity of the railway police dealing with that length of line is desirable.

Secretary: Between Patiala and Bhatinda there are no less than thirteen breaks of jurisdiction.

Sir Leslie Scott: Yes There are plenty of cases where you find that. There is a particular line from Patiala to Bhatinda. In that particular case the jurisdiction was kept by Patiala for a long time. Then "The inconvenience and indeed the impracticability of having jurisdiction changing with every few miles of railway must be obvious to the Patiala Government. For example, the railway from Ferozepore to Ajmer passes successively through the following jurisdictions. . . . . With the exception of Patiala and Jind, all the States concerned, namely Faridkot, Nabha, Dujana, Alwar and Jeypore have granted jurisdiction asked for. Between Ajmer and Bombay there is a similar intermixture of jurisdiction, but the Native States have in all cases granted jurisdiction on the railway line to the British Government. . . . With these remarks I am to request that the Council of Regency may be moved to reconsider the question, because it is essential for the proper administration of the Imperial system of railways that British Courts should be competent to deal with all classes of cases which may arise on any section of that system, the control of which necessarily rests with the British Government"

Then there is the State's answer, Exhibit A (5) (No 30, dated 12th June, 1886) · "In reply to your letter No 284, dated 20th May, 1886, I am directed by the Durbar to state that the Durbar has no objection, as pointed out in my preceding Arzdasht of June 12th, 1884, to handing over the jurisdiction asked for But the Durbar is anxious to see that the Government of Patiala does not experience any difficulty in their Criminal administration, nor in the arrest of offenders who may have committed any crime in the State territory beyond railway limits, and escaped to the railway jurisdiction for safety This anxiety of the Durbar will, it is trusted, claim the utmost consideration and attention of the Government, as the Government in reply to Arzdasht of 12th June, 1884, has been pleased to remark in their letter that 'the cession of full jurisdiction need not in any way affect the question of extradition'." Then it quotes the passage I have read to you from paragraph 3. Then "The powers of apprehending and punishing accused persons are explained in Clause 4 of the Sanad of 5th May, 1860. . . . Hence the Clauses included in the letter of 20th May, 1886, ..." which are quoted, and then he sets out the explanation. The point there is this "The Patiala subjects taking refuge therein do not become British subjects," and so on It is a small point. They want it made quite clear that that was not intended to limit the right of the State to Criminal jurisdiction over British Indian subjects within the State

Then. "It may kindly be noted that this request is not based on any unnecessary anticipation or whim, but as will be apparent from a Parwana of the Deputy Commissioner, Ambala District, dated 20th September, 1885, submitted herewith, it will be clear to the Government, from the perusal of that Parwana, that the Deputy Commissioners and the Assistant Inspector-General of Police have construed 'the cession of jurisdiction' in the sense that the territory of Patiala, whose jurisdiction has been so ceded, has become a foreign territory notwithstanding the Government letter of May, 20th, 1886, " and he wanted it made clear There is nothing more in that letter that I need read, Sir. Then, in the next Exhibit (letter dated

3rd August, 1886)—this is from the State also—he goes to the Government of the Punjab and has an interview and he says: "I presented myself before the Secretary, Punjab Government to-day and explained to him the facts thoroughly. The aforesaid Officer told me that the matter has long been under discussion, that he assured the Patiala Durbar that the cession of jurisdiction from the State was required only for the management of railway line, and that it did not disturb the State administration or effect a change in its present powers He further remarked that Sir Charles Aitchison had given the most excellent and pertinent reply to the State which no Lieutenant-Governor had up to that time given to any State. I told, in reply, that it was a great kindness on his part, for which he is thanked, but that the Durbar had some petty matters to bring to his notice at the time which could easily be set right by his kindness, and that these improvements will obviate all intricacies or disputes in future, and that if he would fully consider the request, he would find it quite reasonable . . . "—Then he referred to the Parwana issued from the district of Ambala, referred to above "Although the Patiala State have surrendered jurisdiction within Railway limits to the Government for purposes of railways, arrest and punishment of offenders in cases arising in the Patiala territory outside the Railway limits, no matter if they are foreign subjects or subjects of Patiala State, will vest in the Patiala State under provision of Clause 4 of the Sanad without any obstruction whatever, as if the matter concerned the State Territory" That is what they ask to be accepted. I will not pause any further on that letter After the interview this letter (No 46, dated 21st September, 1886) is written—"In continuation of my Arzdasht, No 39, dated 12th June, 1886, regarding cession of full jurisdiction over portion of the Rewari-Ferozepore Railway line passing through the State territory, I am directed to state that the Durbar are prepared to cede the required jurisdiction. The Durbar are very thankful to His Honour for having allowed the State concessions as mentioned in paragraph 3 of letter No. 284"—(which I read to you)—"dated 20th May, 1886, and hope to be conferred with even greater favours in future I humbly beg to request that such arrangements may be made as might preclude the possibility of any deviation by the Magistracy and police of British India from the powers and privileges recognised and detailed in paragraph 3 of the letter, because it is apprehended that if the words 'full jurisdiction' are used in the Notification in the Punjab Government Gazette without specific mention of the rights and privileges mentioned in the letter the Magistrates and the Police would only act according to the Gazette Notification and the State officers would be debarred from getting any benefits from these special favours of the Government It has always been the corner stone of the policy of the Patiala State to comply with the orders of the Government so as to secure their goodwill Accordingly the proposal for the cession of full jurisdiction is accepted. But the Government will very kindly devise means to safeguard in future those rights of the State which it has very kindly conceded to it in the letter referred to above" My comment on that letter, Sir, is this. That the State regarded the communication of Government as an order, thought that it was under compulsion, an

obligatory duty to comply with that order, sought to get such mitigation of the order as it could, was much pleased with the mitigation that it got in the letter No 284, and thanked the Government very warmly for such generous concessions. Now, Sir, I say that there is no element of consent in that it is the submission of a State to an order, coupled with endeavours to get the order softened as much as it could, and that is the last cession made until after the Yusuf-ud-Din Judgment in the Privy Council later on

That was carried out by the Government as far as I can judge, Sir, by the letter, Exhibit "A(8)" broadly speaking in the terms which had been asked for by the State and conceded in that letter of May, 1886, paragraph 3 particularly That is a letter (No 659) from the Under-Secretary to the Government of the Punjab to the Commissioner and Superintendent of (1) Delhi Division, (2) Jullundur Division dated 24th November, 1886 "With reference to the correspondence . . . regarding jurisdiction over those portions of the Rewari-Ferozepore Railway which lie in independent territory I am directed to forward copies of two Notifications issued by the Government of India under the provisions of Act XXI. of 1879"—that is the Foreign Jurisdiction Act—"conferring the necessary power upon British Court and Officers in respect of such portions of the Railway as lie in the States of Faridkot, Nabha, Patiala, Jind and Dujana 2 The cession of jurisdiction by the Patiala State was not obtained without some correspondence, as the Council of Regency wished to limit the cession so as to avoid difficulties which it was thought might arise from question of extradition, and it was necessary to explain to the Council that the cession of full jurisdiction is not equivalent to that of sovereign rights, and all that the British Government desired was to acquire power to deal with the cases occurring on the Railway line" Will you please note those two lines very strongly, Sir, because they are of the greatest importance? So is the next sentence "The lands in Patiala territory occupied by the Railway will remain Patiala territory, and Patiala subjects taking refuge therein do not become British subjects, and are not released from any liability they may incur to the Patiala State for offences committed by them in Patiala territory. The jurisdiction of the British Criminal Courts empowered under the Notification of the Government of India will thus be limited to those offences which are committed within the Railway limits, and will not apply to offences committed by Patiala subjects within Patiala territory outside those limits, and the Railway Police should not refuse to give up to the Patiala authorities persons found within those limits who are reasonably suspected of having committed offences in Patiala territory not included in the Railway premises" Now, Sir, that carries out the wishes of the Regency Council of Patiala expressed before, and it is plain from that that all that the Crown was asking for was civil and criminal jurisdiction from the Courts in respect of cases arising on the Railway line The only point to be made about it is, that it was not an agreement, it was submission to an order Then the Notifications were forwarded to the Patiala Motamid, and you see the Notification (Foreign Department Notification No 3927 I., dated 5th November, 1886) on page 181 That Notification is wholly inconsistent with the letter that I have just read. It may be that they

wanted to make a general Notification applicable to other States besides Patiala and that in respect of Patiala they regarded the matter as covered by the letter in question—"Whereas His Highness the Maharaja of Patiala, His Highness the Raja of Jind and the Nawab of Dujana have granted to the British Government full jurisdiction within the lands which lie within their respective States and are occupied, or may be hereafter occupied by the Rewari Ferozepore State Railway (including the lands occupied as stations, outbuildings and for other Railway purposes)." Whether that was implied within the words "on the line" used in the letter of the 20th May, 1886, paragraph 3 is a matter for consideration, but I will assume for the moment that it was not. "In exercise of this jurisdiction"—this jurisdiction is the jurisdiction granted as stated in the previous line—"and of the powers conferred by Sections 4 and 5 of the Foreign Jurisdiction and Extradition Act, 1879, and of all other powers enabling him——" I pause there for a moment. The Foreign Jurisdiction Act conferred no powers; the jurisdiction must be clear, *aliunde*, outside the Act altogether, and there were other powers than those that were granted. Therefore, those last three lines add nothing.

Colonel Peel: He must have power to act from some authority other than his own.

Sir Leslie Scott: I am talking of the enabling jurisdiction and powers

Colonel Peel: There is a difference between jurisdiction and powers.

Sir Leslie Scott: Well, leave out the word "jurisdiction"; the enabling powers cannot come from other than the Act. The powers that enable the Government of India to issue a Notification under the Foreign Jurisdiction Act are powers vested in it beyond the Act and come from another source, and the only source from which they can come is the cession by the State granting them.

Professor Holdsworth: Is it not a fact that the cessions having been made by the consent of the State granting them, the Foreign Jurisdiction Act enables the State to issue notifications as to how those powers are to be exercised?

Sir Leslie Scott: Certainly.

Professor Holdsworth: Is that the meaning of these lines which you are criticising?

Sir Leslie Scott: If they are limited to that and you leave out the words "All other powers enabling him"—assume this sentence to read "In exercise of the powers conferred by sections 4 and 5 of the Foreign Jurisdiction and Extradition Act, 1879," those powers conferred upon the Government of India a statutory power to exercise a jurisdiction which it has clearly, *aliunde*, in certain matters, and as indicated there—I entirely agree with what you state, but it is very important in all these questions of foreign jurisdiction to realise that in a State with a government such as these Indian States have there is no source of authority for exercising extra-territorial jurisdiction except the consent of the State. That is the proposition that I desire to maintain, and I will argue that separately at a later stage. This is what the Notification purports to do, and the Notification, of course, is subordinate legislation, like an Order in Council; it is the legislation under a delegated authority given by the Crown to the Governor-General in Council, the manner of the exercise of which is determined by the Act

of the Indian Legislature—it was then the Governor-General in Council for actual purposes. " 1. All laws for the time being in force in the Hissar district of the Punjab are hereby extended to the aforesaid land "—All laws!—" 2. The Deputy-Commissioner of the Hissar District, the Commissioner of the Delhi Division, the Financial Commissioners of the Punjab, and the Lieutenant-Governor of the Punjab and its Dependencies, for the time being shall respectively have within the aforesaid lands the same executive powers as they may respectively exercise within the British territories subject to their administration. 3 British Courts having jurisdiction within the Hissar District may exercise within the aforesaid lands the jurisdiction which they respectively exercise within the said district. 4 Within the aforesaid lands the administration of the Police shall be vested in the Assistant Inspector-General of Railway Police, or such other officer as the said Lieutenant-Governor may appoint, by name or in virtue of office, in that behalf. The Assistant Inspector-General, or other officer as aforesaid, shall have the same Police powers as may be exercised by the District Superintendent of Police, under any law for the time being in force in the Hissar district, in subordination to the Deputy-Commissioner of the Hissar district and the Inspector-General of Police in the Punjab "

Now, Sir, those four articles call for a little comment That the Courts exercising the jurisdiction conferred upon them by the State of Patiala must exercise it in relation to certain substantive law, I think may be conceded. What the limit is of the application to those Courts of British-Indian laws is a point upon which I do not think it is necessary to embark; it raises questions of considerable difficulty, how and when you are to draw the line. You might quite easily have cases where the law proposed was inconsistent with the law of the State territory. The second article, conferring executive powers, I submit is entirely outside the scope of the jurisdiction conceded. All that was wanted was power for the British Courts to deal with cases arising on the line That is all that was asked for and all that was granted Assuming that there was a cession by agreement to that extent, it does not extend in my submission to a general grant of powers of executive government, which is the purport of Article 2 of the Notification. No 3 I do not criticize. the Courts in the Hissar District are reasonably convenient, it is reasonably near, and the exercise of jurisdiction within the railway limits by those Courts would probably be within the contemplation of the State If it had been a Court in Madras or somewhere a long way away, then obviously it would have been outside; but I say no more on that Some Police powers, as I said, must accompany the grant of criminal jurisdiction to make it effective for the arrest and prosecution of cases, and so on I only point out that the general nature of the powers conferred by Article 4 seems to be very wide, as it gives to the District Superintendent of Police the powers that he could exercise as an official of British India in a British Indian district As regards Patiala I assume that the intention of the Government was that that Notification should be limited by the terms of the letter No 659 dated 24th November, 1886 (Exhibit A. 8). Of course, as Professor Holdsworth will no doubt tell you, the Courts in administering their jurisdiction would not be bound by the terms of that letter, they would be obliged to comply

with the terms of the Notification and be forbidden to look at the letter. But, of course, the State would not understand that, and the State was just submitting and getting the best terms it thought it could. That is the end of that cession and of the letters relating to it.

While the above correspondence was going on between the Punjab and Patiala Governments the Rajpura Patiala branch was nearing completion and was formally opened for traffic on the 31st October, 1884. From the very commencement the Punjab Government realised and understood the distinction between tracts of Patiala lands that had come under the different branches of Indian State or Company Railways—the expression "Indian State Railways" there of course is used to designate a railway of the Government of British India; it is rather confusing—and the tract covered by this branch line which lay entirely in Patiala territory and in addition was built at the cost of the State. Accordingly, Mr. W. M. Young, Secretary to the Punjab Government, wrote to the Patiala Motamid, in attendance on His Honour the Lieutenant-Governor of the Punjab, on 5th October, 1886, No 567 (Exhibit "B") "*I am directed by the Lieutenant-Governor* to address you regarding certain matters connected with the management of the Rajpura Patiala Railway."—You remember it only went as far as Patiala westward, the extension to Bhatinda had not then been carried out—"The circumstances of this line differ from those of *any other railway in the Punjab because its construction has been* undertaken entirely at the expense of the Patiala State and its whole length is situated in the Maharaja's territory The Lieutenant-Governor therefore has been of opinion that under existing circumstances it is unnecessary to ask the Patiala State to cede jurisdiction over the railway to the British Government. In this view the Govern*ment of India has concurred Sir Charles Aitchison has much pleasure* in communicating this decision to the Council of Regency and feels sure that as will be suggested below, the necessary measures will be taken for securing the effective administration of the railway. It has, however, been observed by the Government of India that it is possible that at some future date a cession of jurisdiction to the British Government may be required, if, for instance (1) the present arrangement should be found not to work satisfactorily, or (2) if the line should be extended beyond the limits of Patiala territory, or (3) if it should be included within the Imperial Railway system In the event of the occurrence of any of the above contingencies the Lieutenant-Governor has no doubt that the Durbar would at once readily cede the jurisdiction as required. He proposes to report to the Government of India that the Durbar will in any of these events cede jurisdiction in respect of the Rajpura Patiala line to the same extent as on any other line, like the Rewari-Ferozepore passing through Patiala territory."—Now you see the request there brings in the terms of the last correspondence that you have just considered. They are the terms of that letter of May, 1886, paragraph 3, that I have read—"I am further to suggest *the British Railways Act (IV of 1879)* with the rules framed thereunder (copies of which will be sent for the information of the Durbar) should be applied by His Highness the Maharaja to the line in question just as the British Telegraph Act has been applied to the Patiala Telegraph line under Clause 9 of the Agreement of the 27th August, 1872, and that arrangements, if not already completed, should

be made for the location by the Durbar of a suitable number of Police upon the railway."—The rules as to railway accidents require the agreement of the State. That does not matter. So that what is asked for there is an option to the Government to be exercised at some future date in certain events to take a cession on the terms of the Ferozepore Rewari cession Now, Sir, just pause for a moment as to what the position was. That really was the same gauge as the broad gauge railway connecting with the North-Western line at Rajpura, so that it was a through route, if you take into account the North-Western line, already a through route which stops at Patiala. The answer (No 11 dated 11th March, 1887) is · " I have the honour to acknowledge receipt of your letter No 567, dated 5th October, 1886, and in reply to state that I am directed by the Council of Regency to offer the most sincere thanks of the Durbar for the kind permission granted to the State to retain jurisdiction on the Rajpura Patiala Railway, and in answer to paragraph III of your letter, firstly, that strict measures will always be taken to secure the effective administration on this Railway line as on the other Government Railways, secondly, in the line proposed by the Council and intimated through the letter of the President, Council of Regency, of 5th February, 1887, in addition to other advantages mentioned in the letter it has been observed to save jurisdiction; thirdly, as this line will be constructed at an enormous cost to the State and will also be beneficial for rendering services to the Government, it is earnestly solicited that even in the case of its being included in the Imperial Railway system Government may graciously be pleased to allow the Patiala State to retain jurisdiction over the line as it has so kindly done in respect of the Rajpura Patiala Railway "

Now the importance of that document is as showing that the State was still under the complete and firm belief that it was within the power of the Government to order the transfer of jurisdiction to the Government if it chose, and this letter expresses grateful and childlike thanks to the Government for not doing what it assumed the Government had power to do It shows that the previous correspondence had no element of real agreement and consent about it but was merely the submission to Government I am told there is a phrase which expresses that view which will be familiar to you, Sir Harcourt · *Ba-pase khatir.* I think that is the view that the States have taken

Then Exhibit B (2), paragraph 2 (No 147 dated 24th March, 1887, from Secretary to the Punjab Government to the Patiala Motamid) · "The reply of the Council of Regency contained in this communication (No. 11 dated 11th March, 1887), does not enable the Lieutenant Governor to assure the Government of India of the acceptance of the conditions which by it are considered indispensable and Sir Charles Aitchison hopes that the Darbar will reconsider its opinion and not hesitate to accept the decision of the Government of India as explained in my letter No 567 dated 5th October, 1886, which was framed after full consideration with a view to meeting possible contingencies in future The reasons which render necessary an undivided jurisdiction over all through lines and all lines incorporated in the British system have already been explained To this it may be added that the British Government is not likely to undertake the management of a through line over which it does not possess jurisdiction, and it would be practically impossible for the Patiala State to work its own line separately

when it forms part of a through system. There can be no sufficient reason in the Lieutenant-Governor's opinion for the Patiala State hesitating to do what every other State in India through which the railway line passes has already done. Sir Charles Aitchison therefore strongly advises the Council, and it is the last friendly advice which as Lieutenant-Governor it will fall to him to give them, not to hesitate in their own interests as well as in furtherance of the interests of the Empire to accept the position frankly and without hesitation and accede to the conditions proposed by the Government of India in regard to the jurisdiction of the Rajpura Patiala Railway. If the Darbar should not see its way to this, in order to further the discussion, the Lieutenant-Governor would suggest that the President of the Council should come into Lahore to discuss the matter verbally and come to a settlement of it as it is *difficult to arrive at an understanding* in such matters by means of written communication." The answer (no reference quoted) was: " . . . . But as the Darbar have thereafter been friendly advised to accept the terms proposed by the Government, I am therefore directed to submit this Arzdasht in acceptance of the terms laid down in your letter No 567, dated 5th October, 1886" It is the same attitude.

Then Exhibit B (4) (Letter No. 620 dated 2nd December, 1887, from the Secretary to the Punjab Government, to the President, Council of Regency, Patiala): "With my letter No. 1 C, dated 22nd October last a memorandum by His Honour the Lieutenant-Governor of the Punjab was communicated on the proposal for a railway from Patiala to Bhatinda"—That is the extension—"Since that memorandum was written the Lieutenant-Governor has ascertained that the Council of Regency of the Jind State are of opinion that unless the line were to pass through Sangrur it would not be to the advantage of the State to contribute to its construction. The practicability of taking the line *through Sangrur has been very carefully considered by His Honour* the Lieutenant-Governor, and His Honour has arrived at the conclusion that this idea must be definitely abandoned Under these circumstances a reconsideration of the previous proposals regarding the manner in which the cost of the line should be defrayed becomes imperative and further communications have passed with the Council of Regency on the subject. The result of these communications is as follows:—(1) The Patiala Council of Regency, on further consideration, concurs in preferring the alignment proposed by His Honour the Lieutenant-Governor, by Nabha, Barnala, Rampura and Mohabat-ke-Lehra, but accepts it on the condition that the whole line shall belong to the Patiala State which will bear the whole cost as originally proposed."—That is the route, in fact, followed to-day—"It is understood that the Council wish the line to be *taken up to the town of* Barnala, and not to leave it at a distance, and to this the Lieutenant-Governor sees no objection. (2) Land required for the Railway to be given free of cost by the Nabha State in Nabha Territory, and by the British Government in British Territory. (3) The railway stations to be constructed according to an approved scale, any excess expenditure to the construction of a superior class of railway station being borne by the State concerned. (4) The jurisdiction of the line to remain for the present with States within whose territory it is constructed. *If the British Government hereafter desires to assume full*

jurisdiction over the whole line no objection will be raised by the State The Lieutenant-Governor acknowledges the readiness which has been displayed by the Council of Regency in accepting these proposals, and the object of this communication is to invite the Council to record a formal assent to the conditions above stated." You see, therefore, as Colonel Ogilvie pointed out, there are 13 changes of jurisdiction The answer, dated 14th December, 1887, is this, paragraph 2 "It having already been decided that the line shall belong to the Patiala State which shall bear the whole cost of its construction, the Council of Regency begs to accord a formal approval to the following conditions as desired . . . ." Then come the conditions about the railway stations and the jurisdiction of the line in the terms above mentioned.

The construction of this line progressed fairly fast and it was completed in 1889. In the same year the Punjab Government inquired if the State was following the British Indian Railway Act It was replied that the Patiala State had been following it on the Patiala Rajpura Line since 11th March, 1887 A formal agreement for the working of this line was duly drawn up between the Secretary of State in Council and His Highness Maharaja Dhiraj Mohinder Bahadur of Patiala in 1892-93, having effect from 30th October, 1889, as printed in Aitchison Vol VIII, page 249 *Complete jurisdiction over the whole line was enjoyed by the State for about six years,* and the Police and other arrangements were made by the State There was not a single complaint made by the Punjab Government regarding these arrangements and there appears to be no correspondence between the two Governments till March 1893 It was on the 10th March of that year that the Chief Secretary to the Punjab Government wrote (No 27) to the Patiala Motamid forwarding a copy of the Home Department Notification whereby a general Police-District was created over all lands in the North-Western Railway, and the Lieutenant-Governor of the Punjab was appointed the Local Government for the purpose As arrangements for policing the district were said to have been made ready it was suggested that Patiala State may withdraw its Police The letter is Exhibit C "By the Notification of the Government of India in the Home Department, No 336, dated the 15th of June, 1892, of which a copy is attached for the information of the Durbar, the creation of a General Police District embracing all the lands for the time being occupied by the North Western Railway, including the portions situated in the States of Patiala, Nabha and Kapurthala was announced, and the Lieutenant-Governor was appointed to discharge within the limits of this General Police District, the functions of the Local Government under Act V of 1861 and any other enactment relating to Police in force in the area concerned 2 Arrangements have accordingly been made for the revision of the Railway Police Establishment of the General Police District thus created with effect from the beginning of the current year, and it is no longer necessary that the Patiala State should continue to employ its own Police on the Rajpura Bhatinda Branch, and I am accordingly to suggest, for the consideration of the Patiala Durbar, that its Police on that Branch should be withdrawn." That was done without any communication with the State at all, and the Police of the Rajpura-Bhatinda Branch employed by the State were removed by a stroke of the pen, and the British Police substituted for them.

But although that was the Order it was not carried out for another 3½ years The Patiala Police were left in charge of the railway for another 3½ years The only relevance of that seems to me to be to show that there is no fundamental necessity about these things. It is essentially a matter of arrangement, and that no argument based upon necessity can be adduced for contending that the Crown has powers to *do these things without the consent* of the State Then on the 29th March, the Ruler at that time having full powers, you get the answer of the State (No 17). "In reply to your letter, No. 27, dated 10th March, 1893, I am directed to submit that the Notification of the Government of India, Home Department No. 336, dated 15th June, 1892, in pursuance of which the Durbar has been asked to withdraw its Police from the Rajpura Patiala Bhatinda Railway line does not seem to have any concern with this line. The Durbar after careful consideration of the matter, do not think it necessary to withdraw its Police jurisdiction over the line which is entirely owned by it. The British Government have as a patron through its extreme kindness and favour always protected and safeguarded the rights of the Patiala State and a similar treatment is expected from it in future. His Highness the Maharaja Sahib Mahinder Bahadur has strong hope that His Honour would look into this matter with an eye of justice and realise that the present arrangement which is working quite satisfactorily does not call for any change. On the other hand its introduction would most certainly give rise to many complications and difficulties in matters of administration. Since the Government officers through God's Grace are already well acquainted, wise, and just, there does not appear to be any necessity of further dilation on this point." You notice the date, Sir, 29th March, 1893, and you get the answer to it 3½ years later, so that there was no particular urgency about Police.

Colonel Peel: They may have argued the question of railway jurisdiction at some considerable length

Sir Leslie Scott: Yes. (No. 602, dated 2nd September, 1896). "It will be within the recollection of the Patiala Durbar that when the broad gauge railway line from Rajpura to Bhatinda was originally constructed and opened it was decided that, as the line could not be considered one of through communication so long as it terminated at Bhatinda in connection with the narrow gauge line of the Ferozepore Rewari Railway which has been the case till now, the Patiala State should not at that time be requested to cede jurisdiction over the area in the State under the line, as is required by the policy laid down by the Government of India regarding all through lines of Railway, and as has been ceded by the State in the case of the North-Western, Delhi-Umbala-Kalka, and Rajputana Railways" If I may call Colonel Ogilvie's attention to that reference—the metre gauge line of the Ferozepore-Rewari Railway—that was what made me mention it before. I speak without much knowledge, of course. "As the Durbar are aware the construction of the South Punjab Railway, which will continue the broad gauge line between Rajpura and Bhatinda from Bhatinda to Samasatta and there join the broad gauge line of the North-Western Railway, is now rapidly approaching completion and it is believed that this portion of the line will be opened some time next spring . . . ." Samasatta is about 200 miles west.

Secretary: In Bahawalpur.

Sir Leslie Scott: In Bahawalpur.

"2. The cession of jurisdiction will involve the placing of the police arrangements over the area of which jurisdiction is transferred in the hands of the British Police, and with reference to this the Government of India consider that as in such circumstances the Darbar is relieved of police charges which it would otherwise be obliged to incur for the protection of through-lines of communication, it should be requested to accept, as other States, *e g*, that of Hyderabad, have done, the same share of the proportionate police charges on the length of line in the State as the British Government accepts in British India. This share is three-tenths of the total charge, seven-tenths being debited to the Railway Administration; and I am accordingly to request that the Patiala State may be pleased to accept three-sevenths of the proportionate charge of the police needed for the Rajpura Bhatinda and Bhatinda Samasatta Railway, calculated on the proportionate length of the line inside the boundaries of the State . . . . ." I do not think there is anything else that matters. Patiala felt: we have constructed this line at our own cost, we have had jurisdiction over it all this long time, it has our own Police; now they are taking away everything we want, and they are asking us to pay for the privilege, in addition

Then there is a long letter from the Patiala Darbar, to the Punjab Government, Exhibit C (3), (No 64, dated 18th December, 1896), stating their case. It is a very reasonable letter, except that it is a very long one.

Colonel Peel: It might be both.

Sir Leslie Scott As a matter of fact, if I may respectfully submit, it is reasonable and long. It deals with the whole situation, and I should like you, Sirs, to have it in mind I might just glance at certain passages of it; I do ask you to read it through at some time It is really quite an important letter First of all, at the very beginning "In reply to the Chief Secretary's letter, No. 602, dated 2nd September, 1896, I have the honour to submit that the construction of the Rajpura Bhatinda Railway line was taken in hand by the Patiala State in 1884, and on its completion in 1886, the Punjab Government, out of their paternal position and Royal favour realised the following facts and accorded permission to the State to exercise jurisdiction over this line . . . . . "

Sir, it is a topsy turvy world, this of the Indian States and the Paramount Power, in which the Paramount Power has persuaded the States that the legal relationship is precisely the opposite of what it is.

Colonel Peel: The States did not take your view of it at that time

Sir Leslie Scott: I entirely agree The States—let me put it quite simply—were led into taking that view because they did not know that is was wrong. They are not lawyers, and they did not know that it was wrong. The Privy Council at this date had not given its decision in the Hyderabad Case. Then paragraph 2 "The Supreme Government could think, as a matter of foresight, that in those conditions the jurisdiction might not be successfully administered by the State And the Punjab Government as a matter of precaution and foresight, and on the advice of the Government of India, desired a promise from the State that if, in view of these special circumstances, the Government might wish to take over the said jurisdiction, the

State would have no objection in handing it over to the Government. Still, the late Council of Regency had submitted their natural objections to this point. The Council held that the line would be constructed with a large capital of the State, and that this line would prove very useful in serving the Government. It was, therefore, requested that in similar circumstances it would be proper to leave the jurisdiction in the hands of the State in future as well. But since the Punjab Government were anxious to submit their report to the Government of India and also because they held that a discussion on the prospected conditions was premature and in a way unnecessary, the Council of Regency was strongly advised by the Punjab Government to accept these terms, and it was so done by the said Council on that understanding But a Council of Regency is constituted merely to run the administration of the State In such cases it was beyond the powers of the Council of Regency to give their consent without consulting all the members of the Darbar. Again, the Council of Regency is only a guardian of the privileges of the State during the minority of the Ruling Prince, and so cannot contract any such Treaty as may prejudice the rights of the State, or may, in any distant future, be the cause of mal-administration. Besides, the Council of Regency itself had had no idea at that time as to what extent the administration of the State would be successful in controlling their jurisdiction. Also, the Council of Regency reposed full confidence in the Supreme Government who had always shown paternal favour and consideration . . . . . Rather the operations of this line were carried out within the boundaries of the Phulkian States merely to avoid the inconveniences of jurisdiction. Accordingly, no defect or mal-administration has been marked in the exercise of jurisdiction by the State for the last 12 years Nor has any complaint been heard On the other hand, the State has achieved the highest success in maintaining a commendable administration. It cannot, therefore, be presumed that any complaint will arise against the present administration, if this line is connected with the Southern Punjab Railway. The State has always been carrying out the directions of the Government And the Darbar will be prepared to reconsider any change for the better in the present administration on the receipt of any friendly advice from the Government. At present there has arisen no need for change in the present administration. The Government is, therefore, requested to kindly and graciously abstain from persisting in the change of the present administration. Otherwise, any change in the jurisdiction over the line which passes through the entire length of the State territory will most probably raise difficulties in dealing with criminal cases The Government can themselves realise the importance of this point, discussions of which will only prolong this letter. The Rajpura Bhatinda line can be as easily connected with the Southern Punjab Railway as it has been connected with the North Western Railway . . . . . The object of a through line is only to transport goods and traffic from one end to the other in India Accordingly, if a passenger travels from the Punjab by the broad gauge line he may travel in a reserved compartment to Calcutta, Madras, Bombay, Quetta or Karachi, as he likes, without any obstacle. Hence the condition of the Rewari Ferozepore Railway, which is a metre gauge, is only similar to the Ahmedabad Junction, where the passenger has to change, owing to

the difference of gauges. Yet in the change of gauges the object of a through journey does not in any way suffer. In short, this line, namely the Rajpura Bhatinda Railway, has been serving the purpose of a through line for years together. During the twelve long years of State administration under the benign influence of the British Government no complaint has arisen in the police or magisterial matters. On the strength of the experience of the last twelve years, it can be satisfactorily assured that no difficulty will arise in the present administration in the coming years by the grace of God."—Then there is a lot about the paternal gracefulness of the Government—" . . . . . the State, in order to retain the goodwill of the Government, will have no objection to the transfer of the jurisdiction over the lands of the Patiala territory through which the Southern Punjab Railway may pass"—That is *Ba-pase-khatir* again—" In that case, it is requested that the sovereign rights and extradition powers of the State may be clearly admitted by the Government and specified on the lines of the agreement drawn up in the similar case of the Rewari Ferozepore Railway line. It is further requested that you will kindly note that in the letters which have been issued to the Hon Commissioners of Delhi and Jullundur"—that is Exhibit A (8) which I read before, and is very important—" subject to the Punjab Government, it was briefly stated that the effect of the Criminal jurisdiction which has been transferred by the State to the Supreme Government would be limited to such cases only as fall within the boundaries of the Railway line, and would not extend to offences committed beyond those limits . . . " The next few paragraphs deal with the question of persons arrested in Patiala who may or may not be Patiala subjects. I will not pause on that " But what actually happens, quite against the pious wishes of the Government, is that many offenders escape scot free under the shelter of the same existing provision. This sense of impunity only encourages offences Certain Magistrates of the Government consider the State territory occupied by railway as Government territory For example, Munshi Din Mohammed, E.A C, District Ferozepore, had informed the Vakil by a Parwana dated 21st November, 1886 'Whereas the Faridkot, Nabha and Patiala States are foreign territories, namely, excluded from British India, and the railway line along with the occupied lands falls, in pursuance to the letters of the Secretary to the Punjab Government, No. 350, dated 15th June, 1886, addressed to the Agent, Rajputana Railway, within the Province of British India, when as the object of the letter of the Secretary to the Financial Commissioner, No 5692, dated 28th July, 1884, is that no liquor distilled in any part of a Native State should be allowed to enter in any part of the British territory until the usual Import Tax has been paid and permission obtained from an authorised officer therefore an importer (without permit) can be committed as an offender under Clause 23 of the Act 22 of 1891' Now this interpretation of the Government Officers contravenes the noble spirit of the Supreme Government" Then there is a question about the surrender of arms; then the question of maintaining Police

Then you will see (Letter No 447, dated 30th November, 1897, from the Junior Secretary to the Punjab Government) that the State is asked to make temporary arrangements for policing the Southern Punjab Railway which "has now been opened for traffic, but arrange-

ments for the provision of Railway Police have not yet been completed by this Government" and they are asked to do it for the Government; again showing that these things are matters of convenience and of degree, and not of necessity. Then Exhibit "C (6)" (Letter No. 335, dated 16th April, 1898, from Secretary to the Punjab Government): "I am directed by the Lieutenant-Governor to acknowledge the receipt of your letter No. 27, dated the 28th of February, 1898, relating to the employment of Patiala Police at stations on the Southern Punjab Railway. (2) In reply I am to convey Sir Mackworth Young's thanks for the promptitude with which the Patiala Durbar have met his request for the *ad interim* policing the Southern Punjab Railway as a purely temporary arrangement for the safety and convenience of the public pending the organisation of a regular railway police. I am to add that the cases as regards the cession of jurisdiction over this Railway and the payment by the Patiala Durbar of the Police charges on it have been referred, as already intimated to you, for the orders of the Government of India, which, on receipt, will be promptly communicated to the Durbar." Again, you get the word "orders." Right through this correspondence the Government is setting out to give orders on these matters Then Exhibit "D" (Letter No. 567, dated 24th July, 1899, from Secretary to the Punjab Government) comes at a critical time. It is the year 1899, a critical year from the Government point of view in the history of Railway jurisdiction, because the decision had been given in the *Yusuf-ud-Din* case in 1897. They had thought it over, and they had come to the conclusion that they must get all the States to sign a new form of cession of jurisdiction which the Government thought would give them powers which the Privy Council had said they had not got under the form of cession usually obtained up to that date. They get it in very wide language. Whatever the true interpretation of that document is by itself, or in the light of the correspondence in this Patiala and other cases, whether the Government are right or whether they are wrong in thinking that they did get greatly wider powers than they had up to then, my point is the same that the Government did wrong to these States in asking them to sign a document which they, the Government, thought conferred much wider powers than had been conferred up to then, without making it perfectly plain to the States that they were asking for a much wider cession of sovereign powers than they had asked for before You will see, by a later letter, that the Government subsequently interpret this document which was signed after this by Patiala State in regard to four railways as conferring upon the Government complete sovereignty except in name. You will find a letter saying so. All these provisions about leaving the State with its sovereignty, and the Government only wanting jurisdiction to enable British Courts to operate in railway cases, is all given the lie to by what happened subsequently, and made so much waste paper, and the States were never told what they were being asked to do. That kind of treatment is the kind of treatment that makes certain aspects of the behaviour of the Government stink in the nostrils of reasonable men. I use very strong language there because the Princes feel very bitterly that they ought not to have been treated like that. They do not think that it is the intention of the Supreme Government that they should be treated like that, and yet they feel that they have been. They feel that they have been taken in in these

things, not treated fairly, in that they have been told that the Paramount Power possesses powers over them which it does not possess, and that they have been made to submit to pressure. That is the kind of attitude which they ask, and ask with confidence, should be brought to an end, and ask you, Sirs, to bring to an end by your Report.

Chairman: I do not wish to interfere in any way with your presentation of the case. Of course, the Government of India is not represented here, as you realise, and it is no part of our business to put the case for the Government of India, but, I think, I am speaking the feelings of the Committee, when I say that we think that the case presented by you would have more effect upon our minds if it is not couched in quite such strong language. That is all I wish to say.

Sir Leslie Scott: I should like to say, in answer to that, if I may say so with respect, that it is not the fault of the Princes that the Government of India is not represented here

Chairman: No.

Sir Leslie Scott: So far as the Princes are concerned, they would have welcomed it, and they would have welcomed, as you know, a public inquiry with both sides represented So that I am sure you will not impute blame to the Princes on that head

Chairman None at all

Sir Leslie Scott. As regards the strength of the criticism, all I say is this. I used strong language in order to try and make clear the kind of effect that is inevitably caused on the mind of a person examining into the character of the transactions that have taken place. I have not often in the course of my remarks said very much, but this whole subject of railway jurisdiction seems to me to raise in a very direct form very important aspects of the relations between the Government and the States which, on behalf of the States, I wish to ask to have investigated in order that the evils may be remedied

Chairman. Exactly. We have no objection

Sir Leslie Scott I am not concerned with criticising individuals at all

Chairman We quite realise that

Sir Leslie Scott I am merely emphasising that there is what you may call the mental or moral aspect of the relations which is very important as a factor in preserving really sympathetic relations The States, as you know—nobody better—are perfectly loyal, and they are loyal in spite of much. There is much for which they have got to be very grateful

Chairman: Speaking for myself, and I think I have my colleagues with me, we fully realise the importance of the point and we fully realise the feelings of the Princes in the matter, but it does not help matters from our point of view to couch it in unnecessarily strong language "Stinking in the nostrils" was a rather strong expression. You can understand my point? I understand yours

Sir Leslie Scott Perfectly

Chairman· I do not wish to say anything more about it

Sir Leslie Scott· This letter (Exhibit "D") is the first communication addressed to Patiala after the *Yusuf-ud-din* decision. I read it first before I make any comments on it. "I am directed to refer

to the correspondence ending with my letter No 335, dated 16th April, 1898, on the subject of the cession of jurisdiction and the payment by the Patiala Durbar of Police charges on the Southern Punjab Railway, and to say that the Government of India have now passed orders on the general subject of jurisdiction and Police charges. 2. The objections and arguments of the Durbar contained in your letter No. 27 of 28th February, 1898, and former correspondence, were fully placed before the Government of India, who in compliance with the views of the Lieutenant-Governor have consented as a special case to waive their demand for a contribution towards the cost of the policing of the railways passing through the Patiala State. 3 Owing to questions of Imperial policy which are paramount the Government of India have, however, been unable to agree to a special treatment of the railways in the Patiala State different to that adopted elsewhere in the matter of jurisdiction. His Honour hopes that the Durbar will now, after the full and lengthy consideration which has been given to the subject, agree at a very early date to the cession of jurisdiction in the terms and to the extent required by the Government of India. I am to request that separate agreements in the prescribed form, of which 16 copies are forwarded herewith, may be executed for each of the railways noted in the margin* which pass or will pass through Patiala territory. Two copies for each railway should be signed and returned to this office. 4 At the same time I am to explain that the Government of India do not contemplate any surrender of sovereignty by the Durbar in these lands, and Patiala subjects taking refuge in railway limits will not become British subjects or be released from any liability they may incur to the Patiala State for offences committed in State territory. The Government of India are also willing that the surrender of such persons to the Durbar should be facilitated as far as possible by authorising selected officers to make over accused persons wanted by the Durbar on the production of satisfactory evidence of criminality There is also no objection to an arrest being made in an emergency by Durbar Police, provided that the accused is at once made over to the Railway Police. As a rule, however, the assistance of the Railway Police should be invoked to seize an offender, and under no pretext should an accused person be removed from railway limits except under the authority of an Officer empowered for the purpose by the Punjab Government. 5 As the Government of India have been unable to agree to the proposal of the Durbar to leave the policing of the Rajpura Bhatinda Railway in the hands of the State Police, I am to ask that the Durbar may be moved to hand over charge of the line as soon as the British Railway Police are ready to take it over. 6. In conclusion, I am to add that while the Government of India claim the right to legislate for railway lands over which full civil and criminal jurisdiction is ceded, they recognise that in practice, all the laws *of an adjoining British district, when applied en bloc to railway lands in native territory, need not be treated as in force in those lands If, therefore, the Durbar desire that all or part of some British Acts, such*

* The Southern Punjab Railway including the Narwana-Kaithal Branch, the Rajpura-Bhatinda Railway, the Ludhiana Dhuri-Jakhal Railway, and the Rewari-Ferozepore Railway.

as the Excise Act, or the Arms Act, should not be brought into operation in the railway land in which jurisdiction is ceded, the Lieutenant-Governor will be happy to receive their representations, which, however, to avoid further delay, should be submitted separately from the reply to this letter on the subject of cession of jurisdiction"

I will just ask you to look at the form of cession. If you will kindly refer to page 109 in the Dhenkanal case you will see one· "I . . hereby cede to the British Government full and exclusive power and jurisdiction of every kind over the lands in the said State which are, or may hereafter be, occupied by the . . . Railway (including all lands occupied for stations, for out-buildings and for other railway purposes) and over all persons and things whatever within the said lands." That was the prescribed form and that was the form that was always afterwards followed. The first thing to notice about this letter is that the Government are still claiming the right to pass orders That you see in paragraph 1 and all through the letter. In paragraph 2 they say "The Government of India have consented as a special case to waive their demand for a contribution" as if they were entitled to it and were graciously making a concession In paragraph 3. "Owing to questions of Imperial policy which are paramount, the Government of India have, however, been unable to agree to a special treatment of the Railways"—implying that they were entitled to refuse to agree and that they could order the State, and in consequence they hope that the Durbar will sign at a very early date the forms ceding jurisdiction to the extent required by the Government of India Then, in order to allay any alarm in the mind of the State, in paragraph 4 they repeat, practically speaking, paragraph 3 of the letter No 284 of 20th May, 1886, which was the basis of the cessions previously made by the State. You will find paragraph 4 practically, with slight differences, repeats that paragraph Paragraph 5 again is a refusal to agree.

Now, Sir, what was the position then? There had been no request for a cession of jurisdiction in respect of the first, the Southern Punjab Railway Branch, and the third, the Ludhiana Dhuri-Jakhal Railway Over the Rajpura-Bhatinda Railway and the Rewari-Ferozepore Railway there had been cessions or agreements to cede on the very limited terms previously mentioned The request to sign the forms is, for all practical purposes, an order to sign the forms Paragraph 4 is very carefully worded to prevent its being said that it constituted an Agreement It contains statements of present intentions, the present "contemplation" of the Government, present "willingness" of the Government, that there is at the present time "no objection" but it is very carefully worded not to tie the hands of the Government in the future When they wrote that letter, repeating in paragraph 4 what they had said in paragraph 3 of the letter No 284 of 20th May, 1886, the Government no doubt had carefully considered the Privy Council decision and they knew two things of supreme importance in estimating this letter,—firstly, that the usual transfer of civil and criminal jurisdiction gave the Government very limited powers; secondly, that the Government had no right at all to pass any orders whatever, that everything depended upon the voluntary cession by the State I invite you, Sir, to criticise that letter in the light of those observations

Then (page 495) there is the reply of the State (No. 156 dated 23rd December, 1899) plainly indicating that the State thought they were under orders and obliged to comply: "In reply to your letter No. 567 . . . I have the honour to state as desired by the Durbar that the Government of His Highness the Maharaja Sahib Bahadur have had no objection at any time to obey and carry out the orders of the Supreme Government, nor can there be any objection now. Rather, the policy of this Government has always been to fall in with the Imperial policies of the Government of His Britannic Majesty and they have ever dutifully accepted this policy. At the same time, as the Supreme Government themselves have been in their spirit of Royal grace safeguarding the honours and privileges of the State, the submission of necessary and proper objections will not be considered as trespassing the limit of dutifulness and allegiance That as the Rajpura Bhatinda Railway has been constructed entirely with State capital, and as it passes through a length of 100 miles, most of which is State territory, and as the Police administration by the State on the said line for about 15 years has exhibited no defect, and as the judicial procedure also has been carried on the lines of the Criminal Procedure Code of British India, and as the Officers of the Durbar have been always earnestly and willingly ready to take the paternal counsels and advice of the Government, there has arisen no occasion for the necessity of discontinuing the Police administration and jurisdiction of the State over a line which passes entirely through State territory and over which no different jurisdictions occur, as pointed out by the Government in their letter No. 294 dated 20th May, 1886, in the case of the Rewari Ferozepore Railway. That since in case of the cession of the jurisdiction (criminal powers) the State Post Offices now located on the railway stations are expected to be displaced by the British Post Offices, the desired cession will result in a considerable loss of revenue to the State and also in many difficulties and obstacles in the apprehension of offenders, as submitted at length in the passing Arzdasht. It is, therefore, confidently hoped that taking into consideration the points of this Arzdasht and those of the previous Arzdashts, the powers and privileges of the State will be graciously protected and the police administration and jurisdiction will be permitted to continue as before in the hands of the State. And, if in the opinion of the Government any reforms are needed in the Police administration, the Government of His Highness the Maharaja Sahib Bahadur will be most willingly pleased to enforce the execution of such paternal advice As regards the cession of the jurisdiction over lands through which other Railway lines pass, for instance, Rewari Ferozpore, Delhi. Ambala and Kalka, Southern Punjab and Dhuri Jakhal Railway, as pointed out in your letter under reply, I request you to please note that jurisdiction over the Rewari Ferozepore and D.U.K. Railway has already been ceded by the State in accordance with the wishes of the Government. The correspondence on the subject may be considered as agreements on behalf of the State As regards jurisdiction on Southern Punjab Railway, I have to submit in continuation of my Arzdasht, dated 28th February, 1898, that this line also, like that of Rajpura Bhatinda Railway, passes continually through State territory of over 100 miles length from Uchana to Bhatinda except at Badlada and Tohana (British territory) just as the Railway station at Bhuchu

is the only exception on the Rajpura Bhatinda Railway. From the opening of the Rajpura Bhatinda Railway the jurisdiction over these lands has rested in the Patiala State. It is therefore hoped that the jurisdiction of the State will be allowed to continue through Royal grace, over the said portion of the Southern Punjab Railway as before. The Ludhiana Dhuri Jakhal Railway line is still under construction. Jurisdiction over the lands occupied by that line will be requested for on the completion of that line." Then there is a reference to the sanad—"In the end it is also most respectfully submitted that although for the last fifteen years the Police administration of the State on the Rajpura Bhatinda Railway line has proved to be without any defect and satisfactory, yet in spite of all the Government intend to introduce Police administration exactly on the lines of British India, the Durbar is even so far willing as to request for the deputation from British India of an Indian Police Officer, who will maintain the Police administration under his supervision Although the Patiala Government will have to bear extra expense, yet the Durbar will be more pleased to incur that expenditure rather than prejudice those rights and privileges and powers which the State enjoys in its territory. This suggestion means also a great saving to the British Government as it will save the expense of policing the entire length of the Railway The Police administration will also be running on the lines of the Government Police to the full satisfaction of the Government . " You will remember, Sirs, that of course that railway passes through Patiala and past the administrative offices and through the gardens of two or three of the palaces of His Highness the Maharaja

Then the answer to it (No 417 dated 5th April, 1900) is acknowledging it and saying in effect that they cannot do it. Paragraph 4 "Upon a full review of the case the Government of India have come to the conclusion that for Imperial reasons which apply throughout India and which are of the utmost importance for the administration of the whole system of Indian Railways it is necessary that the Patiala Durbar should comply with the wishes of Government in the matter, as the majority of Native States have already done in India" Now, Sir, I very respectfully submit that there is no such necessity as there alleged, but the letter was bound, of course, to put tremendous pressure upon the State Then the State did not answer for a long time A complaint was made about not answering On the 26th June a deputation of Patiala and Nabha Ahalkars saw the Chief Secretary to the Punjab Government at Simla and discussed the matter with him specially with reference to "Imperial Reasons" which the deputation urged would not be affected by allowing the States to retain jurisdiction, on the other hand, it was shown how the State had come to the help of the Imperial Government in the hour of need and that not only jurisdiction but the whole Railway and all the resources of the States would be at the service of the Government in case of war or any other grave necessity The deputation also suggested that the services of a British Officer be lent to the State for trial of offences in Railway lands for the sake of uniformity and better efficiency if the Government so desired The Chief Secretary noted these points and informed the Motamids of the States afterwards that the Lieutenant-Governor could not see his way to any alteration in the terms proposed But agreements were not signed for some railways till many years after

this. For the Rewari Phulera Railway it was signed on 2nd July, 1908, and for the Main line of the North-West Railway it was not signed till very long afterwards, about the end of 1913. In actual practice for many years all jurisdiction, including criminal and police arrangements, remained entirely with the Patiala Government That has a direct bearing on the question of the reality of the alleged Imperial necessity.

Exhibit "D (4)" is the answer of the Motamid: "In reply to your letter No. 567, dated 27th July, 1899 . . . I am directed to submit that as the question raises some very important issues touching the honour, prestige and administration of the State and even a portion of its income, therefore, the delay in reply was inevitable. The views of the Durbar as on several previous occasions were communicated to you in my Arzdasht No. 156 dated 22nd December, 1899. Subsequently the matter was personally represented to you on the 26th June, 1900 . . . The Government, as would appear from their letter No. 567, dated 22nd July, 1899, had invoked the plea of 'Imperial reasons' in support of their claim for plenary jurisdiction, but it being not clear as to what was included in the phrase 'Imperial reasons' it was replied that the word as understood by the Durbar was that this jurisdiction was considered necessary for the following reasons: (1) Strategic purposes, that is, for the protection of the Empire in the event of an outbreak of war. (2) To have uniform laws and rules over all the Railway lines in the interest of general administration. (3) That the Magistrates dispensing laws should be of the same legal acumen and experience as the Magistrates of British territory. (4) To extend to British foreign subjects and Europeans residing within the Railway limits of the Native States all the special privileges allowed to them under the British Indian laws. With regard to No 1 it is needless for me to dilate upon the sincerity of purpose which characterised the actions of the Rulers of the Patiala State and Motamids in their relations with the British Empire They gave practical proof of their loyalty. . . . The Durbar are quite prepared to place this Railway line at the disposal of the Government in the event of war for safety of the Empire. 2 As regards the uniformity of law and procedure, the Durbar have already agreed and reiterate their promise to enforce the same laws and rules as obtain in the Punjab 3 The experience of past 16 years has amply proved that State officials have been enforcing these laws without any complaint. However, for the further satisfaction of the Government, the Durbar are prepared to ask for the loan of the services of a capable Indian Magistrate possessing the same qualifications as the Magistrates of the adjoining British Districts of Ambala and Ludhiana to decide Railway cases in accordance with laws and rules in force in the Punjab. 4 The Durbar are prepared to safeguard special rights allowed to the foreign British subjects and Europeans under the British Indian Laws, and will hand them over to the British Magistrates for trial. 5 It was further submitted that this was merely a brief outline of the matter and the details could be worked out later, on your acceptance of the general principle. It was also added that if the proposals outlined above are accepted, the object of the Government would be served without the cession of jurisdiction, and the rights and privileges of the State would also be safeguarded. 6 Notwithstanding the submissions of the Durbar, the Government have repeatedly urged the cession of jurisdiction. It has been the

corner-stone of the policy of the Durbar to submit obediently to the wishes of the Government. Therefore, merely with a view to secure the goodwill of the Government, the Durbar make over jurisdiction to the Government over Southern Punjab Railway, including Narwana Kaithal Branch, Rajpura Bhatinda Railway, Dhuri Jakhal Railway and Rewari Ferozepore Railway. Ten copies of the Agreements signed by officials duly authorised by the Durbar are submitted herewith It is, however, very respectfully submitted that although the Government has not seen its way to approve of the humble submissions of the Durbar, they are fully confident in the sense of kindness of the Government that when they think it opportune they would not hesitate to consider their past and present requests favourably As stated in Paragraphs 4 and 6 of your letter under reply that the Durbar should separately submit its wishes in the matter of apprehension of accused persons and the enforcement of Excise and Arms Acts, the Durbar offer its hearty thanks to the Government . " There again you see the Durbar is treating itself as under the orders of the Government Exhibit "D (5)" is a long letter from the Durbar (No 171 dated 15th October, 1900)—I am going to summarise this—pointing out the difficulties that would arise to it in regard to the arrest of offenders going from the State who might escape, unless the State police could arrest them at once, or they could demand immediate surrender by the railway police, objecting to extradition proceedings because it was not British territory but Patiala territory; then raising the question of the Excise Acts, pointing out the difficulty if the State does not retain excise jurisdiction within the area to collect customs and excise duties; pointing out the difficulties about the Arms Acts, of State officials carrying arms having to give them up and so on, pointing out the difficulties about post offices, that if the Patiala post offices were supplanted by British post offices they would lose all the revenue coming from them, there being, as you remember, a postal convention by which the State retained the post office administration throughout the State; pointing out those things and saying at the end that already there were many lines passing through Patiala territory; that it was likely in the future there would be more interruptions of Patiala jurisdiction by all these lines which would be very serious, and, to use the expression at the end of the letter: "All State territories will be swallowed up like the lands on the sea-shore."

Then the answer is Exhibit "D (6)"—(No. 25 dated 8th January, 1901) Paragraph 2. "The decision communicated in letter No. 567 dated 24th July, 1899, and No. 417 dated 5th April, 1900, must be accepted by the Durbar as final." Then paragraph 3: "You need not worry about extradition proceedings, your fears are unfounded; offenders will be surrendered." Paragraph 4: "Any representations you like to make about Excise and Arms Acts will be considered carefully and we will do our best to meet your wishes." Paragraph 5: "While the principles laid down by the Supreme Government . . . are no longer open for discussion, the practice . . . has not been quite uniform"; and they offer the State the alternative of making all laws of the Punjab applicable *en bloc*, but not enforcing some of them in practice, or laying out a set of special laws specially suitable. Then there is a Robkar of the State (dated 20th March, 1901), at the end

of which they say they will submit representations on the Excise and Arms Acts and the Postal Convention separately.

Then there is a letter, No. 898, dated 10th March 1906, in which the Government ask for transfer of jurisdiction of the Rajpura Bhatinda Railway to be carried out. The reply, dated 17th March, 1906, is that the orders of Government will be carried out.

Then all these exhibits under the head "E" relate to minor cases where the Government did various things, or their officers did various things, recognising State jurisdiction, and I am going to omit them. I will go on to Exhibits "F." There is the draft Notification dated August, 1912, about arms, issued without consultation with the State in any way. I will not pause over that. Exhibit "F (3)" is from Major Elliott, Political Agent, to the State (No. 1040, dated 1st April, 1913): "In continuation of my letter No. 297c, dated 12th December, 1912, regarding the application of special Arms Rules to railways in Native States in the Punjab, I am directed to state, for the information of the Durbar, that in exercise of their right to legislate for Railways over which Civil and Criminal jurisdiction has been ceded, the Government of India have decided to proceed in the matter without awaiting the replies of the Durbars in question." There the right to legislate is claimed. The replies of the Durbars were six months behind because the Phulkian States were discussing among themselves by the request of the Government and it took some time.

Now, Sir, at that point I want to read two letters from the Jind case (page 429, Exhibit 17) (No. 238, dated 17th January, 1914, from Political Agent, Phulkian States, to the Foreign Minister, Jind State). "With reference to your letter No. 359, dated the 14th October, 1913, on the subject of the sale of liquors of European manufacture at the Refreshment Room of the Jind Railway Station, I am directed to inform you that as full and exclusive jurisdiction over the land occupied by the Railway has been ceded, the Durbar are in error in assuming that they have jurisdiction in the matter of Excise Nor is license required from any British Authority, as the provisions of the Excise Law have not been extended to Railway lands under British jurisdiction in the Jind State." Of course the practical result of that was that Jind was suffering very much through duty free liquor being sold at the stations You observe there the claim of the right to exclusive jurisdiction in fiscal matters. Then Exhibit 19 (Foreign and Political Department Notification, dated 7th April, 1914): the Stamp Act is applied and the State loses revenue out of stamps.

Then, on the 13th June, 1914, the Foreign Secretary of Patiala writes a long letter (No. 518) in which various arguments are reasonably expressed and cogent arguments put forward about the inconvenience to the State that will result from the Excise and Arms Acts being applied and so on, and in paragraph 4 says: "I am, therefore, to request that you will kindly move the Government to allow the Durbar to retain full jurisdiction over the lands under the Railways situate in the State territory as far as the Excise and Arms Acts are concerned" Then they point out the difficulties that will result from the opening of a British Railway Station Post Office which will deprive the State of Postal revenue of a considerable amount,

and the last paragraph I must read· "In conclusion, I am directed to point out that the Supreme Government had given definite and repeated assurances to the Durbar, when the Civil and Criminal jurisdiction was ceded, that the State was not asked to cede its 'Sovereign rights in the land' but only full jurisdiction which is necessary to enable British Courts to take cognizance of matters that occur on the line, and that the lands occupied by the Railway would remain Patiala territory. Firmly believing in the benevolent intentions and good faith of the Supreme Government, the Durbar are still confident that 'the sovereign rights' will not be allowed to become an empty phrase, and this part of 'Patiala territory' will not be separated from the rest for all practical purposes of the administration by the introduction of new laws and regulations It is also an important consideration which the Durbar trusts the Supreme Government will always keep in view that with the increase of the Railways the administration of the State may be seriously hampered by numerous breaks in the continuity of the area of jurisdiction, if facilities comparatively with British India are not allowed to the State on the Railway lines intersecting its territory" Then Lieutenant-Colonel Gurdon replies, he is the Political Agent (No 4064, dated 18th November, 1914). Paragraph 2 "His Honour the Lieutenant-Governor cannot see his way to forwarding the representation regarding the Arms Act and Rules to the Government of India, as either the Act or the Rules similar to those notified are in force on all railway lines in Native States elsewhere in India There does not appear to be any reason why the Phulkian Durbars in particular should object to their application, or claim special treatment on this question" I venture respectfully to submit that those representations ought to have been sent. The State was invited, in the earlier correspondence, to send representations when the occasion arose and they do so when the occasion arises after the jurisdiction is actually taken over, and then the Lieutenant-Governor refuses to forward them to the Government of India Paragraph 3· "In regard to the Excise Act, it is understood that two main inconveniences are felt by the Durbar in consequence of the Railway Lines in their States being subject to the Punjab Excise Act . ." I will not trouble about the details of those

I want you to read the Jind Exhibit 24 (page 438), because this is a letter coming from the Phulkian States, to which the critical letter that I am going to read next is the answer This is dated 3rd January, 1917 (No 1 from the Foreign Minister, Jind State, to the Political Agent, Phulkian States) The first two paragraphs I need not trouble about. "3 A reference to the letter No 568, dated the 24th July, 1899, from the Government of the Punjab" (that is similar to a letter in the Patiala case—Exhibit "D," No 567, dated 24th July, 1899) "will show that in regard to the cession of areas under Railway lines, the Government did not contemplate any surrender of sovereignty by the Durbar in the lands, and in pursuance of this principle paragraph 5 of that letter states, 'If, therefore, the Durbar desire that all or part of some British Acts, such as the Excise Act or the Arms Act, should not be brought into operation in the Railway lands in which the jurisdiction is ceded the Lieutenant-

Governor will be happy to receive representations.' In paragraph 5 (a) of his letter No 25, dated the 8th January, 1901 . . . . the Chief Secretary to the Government of the Punjab wrote, 'The Government of India recognise also that as a matter of policy, fiscal laws should generally not be enforced and that undue interference with the States should be avoided.' " That is a letter to Jind which was not sent to Patiala. "4 The passages quoted naturally led the Durbar to take the view that the cession of jurisdiction, in respect of lands under Railways, was to be limited to the extent necessary for working the Railway lines, and that the interference with the State's own jurisdiction over those lands was not to extend to such matters as affected the general administration of the revenue and excise laws and the operation of the Arms Act and the like. Indeed, the letter of 1899, in dealing with certain objections put forward by the States addressed, stated that the subjects of the State concerned, would not, on taking refuge within Railway limits, be released from any liability they may incur to the State concerned for offences committed in State territory, and that the surrender of such persons should be facilitated as far as possible. The power of the Durbar Police, in cases of emergency, to make arrests on the ceded lands, was recognised, subject to the condition that the person arrested be made over to the Railway Police. 5. Thus, while inviting the State to make representations in regard to the extension to the ceded lands of certain laws such as the Excise and Arms Acts and other fiscal laws, and stating that the sovereignty of the State remained intact, the jurisdiction assumed over the lands in question is such as to leave great doubt as to what Sovereign Rights are deemed to have been left to the State . . . . 6 The representations which the State desired to make in regard to the matters left open for consideration by the above quoted letters, were unfortunately delayed " and meanwhile notifications were sent about arms, ammunition and so on. Paragraph 9: "In dealing with that reference, the Durbar ventures to think that the representations contained in the letters of 1899 and 1901 may have been overlooked, inasmuch as the points dealt with are those on which the States addressed were invited to submit separate representations later on. Your reply shows that those representations are not now deemed admissible, and, therefore, the Durbar would wish to be supplied with some definition of the Sovereign Rights which are still exercisable by the Durbar over the ceded lands."

Now, Sir (page 516), you get what I call a critical letter (No. 7564, dated 13th November, 1917) from the Political Agent in the Phulkian States to Patiala. "I am directed to refer to the correspondence ending with my letter No. 4064, dated 18th November, 1914, regarding the question of jurisdiction and sovereignty over Railway lands in the State and to explain the position as follows. 2. The jurisdictional powers of a State "—they use that word as equivalent to "sovereign" —"may be classified as legislative (the power to make, alter, and repeal laws), executive (the power to enforce and execute laws), and judicial (the power to apply the laws in the decision of cases arising under them). Accordingly the expression* 'jurisdiction of every kind'

* See the Standard form, Aitchison, Vol. VIII, page 243.

which is used in the agreement for cession of jurisdiction, entered into by the Durbar, includes all these kinds of jurisdiction which go together to form the right of jurisdiction of a State and the use of the term 'exclusive' places beyond doubt that the Chief has reserved no jurisdiction to himself. Full and complete jurisdiction has been ceded to the British Government and the Durbar's request that for certain purposes the Railway lands should be considered to be under the sole jurisdiction of the Durbar could not be granted without a retrocession, in part, of the jurisdiction which the Durbar has ceded. That has never been contemplated. All that Government offers to do is to consider any representations the Durbar may wish to make against the application of any particular law, but it has never offered to allow them to substitute and enforce their own law. Only those laws which the British Government apply can have force in the lands in which full jurisdiction has been ceded, but Government is ready to consider the views of the Durbar in deciding what laws shall be declared to apply. 3 With reference to a question that some clear decision be given of the sovereign rights which still remain with the State over the ceded lands, the answer is that it is only nominal sovereignty that remains with the Durbar, all the rights or powers of sovereignty have been ceded to the British Government under the term 'Full and exclusive jurisdiction of every kind over all persons and things whatever, within, etc' This phrase covers all rights of sovereignty except the name. The Durbar's rights of sovereignty are in abeyance for so long as the cession of jurisdiction continues They have temporarily passed to the British Government though the nominal sovereignty remains with the Durbar. Should the ceded lands cease to be used for Railway purposes, the jurisdiction of the British Government would *ipso facto* come to an end, and the Durbar, in virtue of its undisturbed sovereignty, would at once resume jurisdiction. The position is one frequently met with and well understood in nearly all the leading Native States of India, from Hyderabad downwards, where, for Imperial needs, jurisdiction is exercised by the British Government not only in Railway lands but also in Residency and Cantonment areas 4 His Honour, the Lieutenant-Governor trusts that the Durbars, which have always been so prompt to realise and discharge their Imperial obligations, will, on further consideration, see that the cession in question in no way derogates from their dignity and sovereignty, as confirmed by the Sanad of 1860."

Chairman I think that would be a convenient point to adjourn

Minutes of the Evidence given before the Indian States Committee at Montagu House, Whitehall, S.W.1.

Tuesday, 23rd October, 1928, at 3.30 p.m.

PRESENT:

Sir HARCOURT BUTLER, G.C.S.I., G.C.I.E., *Chairman.*
Colonel the Honourable SIDNEY C. PEEL, D.S.O.
Professor W. S. HOLDSWORTH, K.C.
Lieutenant-Colonel G. D. OGILVIE, C.I.E., *Secretary.*

Their Highnesses the MAHARAJA of KASHMIR, the NAWAB of BHOPAL, and the MAHARAJA of NAWANAGAR.

The Right Honourable Sir LESLIE SCOTT, K.C., M.P., appeared on behalf of the Standing Committee of the Chamber of Princes.

Sir Leslie Scott: I had just dealt with the letter of the 13th November, 1917, when the Committee rose. My submission in respect of that letter is, quite shortly, that the claims put forward by the Government there were wholly inconsistent with the understanding contained in the correspondence that had preceded it in earlier years, and that the Government were not entitled to take the view that they were taking there. But if the view expressed in that letter, that the prescribed form which was signed by the State in accordance with the request in the letter of the 24th July, 1899, which I read, was the view that the Government had held from the start, and if it was in order to effect a transfer of complete sovereignty on those lines that they asked Patiala to sign the prescribed form in July, 1899, it emphasises very much the submission I made yesterday that the Government ought to have told Patiala in 1899 what they were asking the State to agree to, as it was directly contrary to the assurances that had previously been given. There is no immediate answer to it from Patiala, but during the following year Jind answered it, and in considering the correspondence you have to bear in mind that the three Phulkian States were acting in concert by arrangement, and for one State to send an answer was regarded by the other States as the equivalent of all three sending the answer.

The letter containing Jind's answer is Exhibit 26 (No. 591, dated the 17th August, 1918) "I am directed to acknowledge the receipt of your letter, No. 7564, of the 13th November, 1917 . . . . 2. The view expressed by you on behalf of the Government, briefly stated, is that the cession of lands for Railway purposes embraces a cession by the Durbar of jurisdiction of every kind, including legislative, executive and judicial, and is full and exclusive, and that nothing remains to the Durbar but the nominal sovereignty until the expiry of the time for which the lands are required for the purposes for which the cession was made, when the sovereignty and jurisdiction of every kind will revert to the Ruler of the State in its original completeness. In this

connection you refer to the agreements of cession. 3. No doubt the agreements of cession entered into in regard to each of the three Railways passing through the territories of the Jind State, which were very brief and general in their terms, support the view expressed in your letter" I do not think they did at all, but the Jind State is in a very submissive state of mind "At the same time it may be pointed out that these agreements were signed, at the urgent request of the Government and to avoid delay, in the year 1900, subject to negotiations then proceeding as to certain assurances and reservations, which were under consideration, and that both before and since such signatures, correspondence has continuously been carried on regarding the fulfilment of such assurances and the disposal of those reservations, and the view now expressed of the finality of the actual cession documents has on no occasion been relied on as barring the discussion and determination of the matters in question 4 As to the assurances given, I venture to invite your attention to the following references made in the course of the correspondence —(a) the lands occupied by the Railways will remain Jind territory . . ."—All these letters, Sir, I think are in the Patiala correspondence that I read —" (b) The surrender of sovereignty by the Durbar in these lands is not contemplated . . (c) In practice all the laws in force in an adjoining British district would not apply *en bloc* to such lands ceded If the Durbar desired that all or part of any British Act should not be brought into operation in ceded lands, representation may be made, and the matter will be duly considered—instances referred to Excise Act, Arms Act, Post Office Act, etc, . (d) Assurance that the cession of jurisdiction did not involve surrender of sovereignty was given in Mr. Dane's letter No 568, dated 24th July, 1899 "— That is the letter Exhibit "D" in the Patiala correspondence.—" (e) Fiscal laws will not be enforced and the policy of Government is that undue interference should be avoided, Excise Act, Fiscal and other laws left open to consideration . . (5) The above references make it clear that the cession was not to affect the sovereignty of the State and that the cession of jurisdiction was to be limited to the extent necessary for carrying on the Railway lines, and that the interference with the jurisdiction of the State over the lands ceded would not extend to other matters affecting the general administration in revenue or excise or other fiscal matters, and that the extension of British enactments would be subject to the representations made by the Durbar being duly considered before such extension In this connection the questions which have been discussed from time to time have been, the powers of the State Police in ceded lands, extension of the Excise, Revenue and Financial laws and of Arms Act, Post Office Act and other Acts That the pledges given, therefore, do not conform to the view expressed in your letter and that the fact that the Durbar's objections have continued to form the subject of discussion between 1900 and the present time militates against the view now expressed as to the completeness of the cession, inasmuch as that view, if correct, would have been a bar to the objections taken 6 I may here point out one matter which illustrates a difficulty in the present policy of administering the Railway lands ceded by the Durbar A Refreshment Room has been established at Jind Railway Station, and a Rink for the recreation of the staff also exists At both these places wines and spirits are

being sold freely without any licence at all, either from the Durbar or from the Deputy Commissioner of Rohtak. Hitherto the Durbar have claimed that, as far as Excise is concerned, the State has jurisdiction within the Railway boundary, and it was considered desirable to require the vendors of wines and spirits to take out a licence. The matter was referred to the Government by the Political Agent, who, in his letter No 238, dated 17th January, 1914, conveyed the decision of the Government to the effect that the Durbar's claim to jurisdiction in Excise matters was not admissible, while no licence is required from any British Authority as the Excise Laws have not been extended to Railway lands. Thus, while the State loses a definite income, the vendors of wines and spirits go absolutely free The Durbar urge that if it be held that the State possesses no fiscal jurisdiction in the ceded lands, the Government had, under the terms of agreement of cession, no reason to hesistate in regard to extending its own fiscal control, in the area in question between 1900 and 1914. 7. A reference to the letter No 910, dated the 14th August, 1901, from the Chief Secretary to the Government, Punjab, to the Political Agent, Phulkian States, in pursuance of a request made by the Durbar, supplied a list of the Civil and Criminal enactments proposed to be put in force in Ludhiana-Dhuri-Jakhal and other Railways. It will be observed that no fiscal laws are mentioned, and that it was natural to expect that the jurisdiction ceded was covered by the laws supplied in the list and that, as to other matters, the jurisdiction of the Durbar has not been affected. While the Durbar raised objections to none of the Civil enactments, it confined its subsequent representations to the Post Office Act, out of those mentioned, and to other points relating to fiscal and excise laws and other matters mentioned in letter of the 3rd January, 1917, which elicited your letter under reply. It is submitted that these facts make it clear that no jurisdiction was intended to be ceded as to fiscal and other matters not indicated in the list of laws supplied and that as to these matters the State was intended to retain its jurisdiction. 8. It would appear from your present letter that notwithstanding the assurances given and the matters reserved for consideration, the agreements ceding jurisdiction given in 1900 are in future to be interpreted strictly and definitely, and, as leaving no room for further discussion. In this view it would be superfluous to refer further to the points in detail raised by the Durbar in the past, and especially those referred to in my letter of January, 1917. At the same time the Durbar cannot help feeling that the assurances given and reservations made in the past have not been fully carried into effect. So far as the Durbar is concerned, it still supports the position stated in my letter of January, 1917, namely, that the intention of the cession was to confine the jurisdiction to such matters as were necessary to carry on the administration of the Railway lines concerned, and that as to other matters the State jurisdiction remained operative. (9). The Durbar therefore consider that the representations made by them are worthy of reconsideration on the ground that the present decision is contrary to the assurances given by the Government and the matters reserved for consideration in the past, and that the agreements signed in 1900 were so signed on the understanding that the assurances given would be carried out, those agreements notwithstanding, and indeed that the negotiations have been carried on with

the State on that basis for the last seventeen years (10). The Durbar trust that its attitude will not lead to any misconception. It is at all times ready and willing to meet the policy and wishes of the Government of India with readiness and loyalty; it nevertheless desires to bring to notice the grounds on which it seeks relief on certain matters mentioned in my letter of January, 1917, and on the general question herein raised "

Then there is the answer (No 5967, dated 19th December, 1918), Exhibit 27. "With reference to your letter No 591, dated the 17th August, 1918 . . . I am directed to say that the Lieutenant-Governor is not disposed to reopen, or to move the Government of India to reopen, a question that has been finally settled after full consideration 2. The position was clearly explained in my letter No 7564, dated the 13th November, 1917, and although Government is prepared to consider the Durbar's wishes as to what particular enactments should be applied to such lands, there has never been any intention of withdrawing from the position that the Durbar's jurisdiction has been ceded fully and exclusively. 3. Finally, I am directed to say that His Honour does not see any reason to believe that there has been any contravention of the assurances given by the Government in the past " That letter shows that the letter of the 13th November, 1917, written by Mr. Crump, was a letter representing the considered views of the Government of India The next two Exhibits I want to read (letter No 315, dated 25th May, 1920, from Political Secretary, Jind State, to the Political Agent, Phulkian States)—"With reference to the correspondence ending with your letter No 5967 dated 19th December, 1918, on the subject of the cession of jurisdiction over lands of the State occupied for Railway purposes, I am directed to say that the agreement as to the above was signed under assurances and at the urgent request of the Government and in the interpretation thereof naturally is to be taken into consideration the intention in the making of such engagements. The purpose was to cede jurisdiction to the extent necessary for the administration of Railways and the words, though full and exclusive, were never intended to be extended in their literal sense but were to be governed by the assurances then given As to the matter of particular enactments, I am directed to say that the Arms Act and Excise Act, as administered in British India, be not extended to these lands I am to invite your attention in this connection to letter No 568 dated 24th July, 1899, from the Chief Secretary to the Government, Punjab, to the Motamid, Jind State, in which assurance as to these Acts is specifically given "—That refers to the assurances—"With the Chief Secretary to Government, Punjab's, letter No 910, dated the 14th August, 1901, addressed to the Political Agent, Phulkian States, copy forwarded to the Vakil, Jind State, with your predecessor's endorsement No 986 dated the 20th August, 1901, a list of certain Acts in contemplation to be applied to these lands was sent In the said list the Durbar takes exception to the application of the Post Office Act It is, of course, presumed that no Acts other than those included in the list are to be administered on these lands In other matters the law of the State ought to be held applicable." Then the answer Exhibit 29 (No 3272 dated 27th July, 1920): "With reference to your letter No 315, dated the 25th May, 1920, I am directed to point out that the Durbar is under a misapprehension

in supposing that the Arms Act has been extended to railway lands within Jind State. The Post Office Act was extended many years ago In 1913 the Governor-General in Council, acting under the powers conferred by the Indian (Foreign Jurisdiction) Order in Council, 1902, applied certain rules in regard to arms, etc., but the Arms Act has not been extended to those lands. . . . ." —A very minor distinction really between what was done and what the State thought had been done—" 2. With regard to the extension of the Excise Act in 1919 the omission to consult the Jind Durbar is regretted It was partly due to dislocation of the work in the Secretariat after the disturbances in the Punjab. I am directed to say that if the Jind Durbar wish to make any representations in regard to the extension of the Excise Act His Honour the Lieutenant-Governor will be prepared to consider them." That is the end of the main correspondence The only other matters in the Patiala case are relating to certain specific Acts applied by the British Government to the railway area which prejudiced the Patiala State. Exhibit G (page 517) raises the question. The State having passed an Income Tax Act in 1917 naturally sought to ascertain what the incomes were that were accruing within the State. This letter is from a State official addressed to the Agent of the North Western Railway (No 541 I.T. dated 12th November, 1917) "I have the honour to state that an Income Tax Act having been introduced in the State with effect from 1st Baisakh, 1974, corresponding to 13th April, 1917, all income which arises, accrues, or is received within the State is taxable under the Act The Rajpura Bhatinda line is run on contract by the North Western Railway at the rate of 52 per cent. of the gross receipts, therefore the income of the North Western Railway from this source is assessable to taxation. I therefore request you to send me a profit and loss account. . . ." The answer from the Political Agent (No 5875 dated 13th December, 1918). "I am directed to address you regarding the Durbar's desire to assess to income tax the income derived by the North Western Railway from the proportion of earnings retained by them for working the Rajpura Bhatinda Railway and (2) to assess to income tax the employees of that railway whose headquarters are in Patiala territory 2. In reply I am to say that the Government of India agree in the conclusion arrived at by His Honour the Lieutenant-Governor in both cases, namely, that in the former the Durbar cannot claim to levy the tax as the preambles of Notification 516 I.B and 517 I.B. declare that the Governor-General in Council has full and exclusive power and jurisdiction of every kind over all the lands occupied by railways lying within the States and over all persons and things whatever within the said lands. These words imply that the jurisdiction of the Patiala State is ousted; the Patiala Income Tax has therefore no operation within railway limits, and Income Tax cannot, in consequence, be charged by the State on the income of the Railway, but that in the latter their claim is admissible. 3. The Government of India also agree with His Honour that it is undesirable that the employees in question should be subject to double taxation, and orders will be issued for the refund to them from Imperial Revenues of the amount which they may pay to the Durbar in respect of salaries they receive from Government This concession will, however, be admissible only

in the case of those employees who are British subjects, and have to pay both the India and Patiala Income Taxes." The Notifications follow and they appear in Aitchison, page 257, the 8th Volume; you will see that the recital, the preamble of the Notification, is a quotation from the Railway form of 1900, it merely cites it I do not think that there is anything to call attention to particularly in the first form used In the second Notification (517 I B.) you will observe, Sir, that a number of Acts are applied to the area, raising the question of the jurisdiction of the Crown to apply all those Acts I will not deal with that now, but I merely show you that there it is done by that Notification. In our submission it went beyond what they were entitled to do. Then (page 520) Exhibit "G 3" says "In continuation of Mr. Crump's letter, No 5875, dated 13th December, 1918, I am directed to forward herewith for the information of the Durbar, copies of the marginally noted* correspondence regarding the claim of the Durbar to levy Income Tax from employees of the railway whose headquarters are in State territory, and to explain that the decision of the Government of India, on which the Durbar's claim is based, was not sufficiently precise. The admission that railway employees whose headquarters are in Patiala territory are liable to the Durbar Income Tax was intended to have been restricted to those employees who reside in State territory but beyond the limits of railway lands As full jurisdiction has been ceded by the Durbar over railway lands, the State Act cannot operate within such lands" It was only to employees residing within the railway lines that the Durbar's notice was addressed.

Then Exhibit "G (5)": Sir The Superintendent writes (No 2271 dated 5th May, 1921) refusing to produce a copy of the Government of India letter to the Resident at Baroda containing reasons for the course that had been taken in regard to Patiala Then Exhibit "G (8)" (Letter dated 1st August, 1921, from the District Traffic Superintendent, Bhatinda, to the Foreign Secretary, Patiala Government) "I beg to inform you that the Hindu and Mohammedan refreshment room keepers at Bhatinda railway station have represented that the Patiala State Local Authorities demand Rs. 52-2-0 and Rs 26-8 0 per annum respectively from them as Income Tax . The other vendors at this station have shops in the Patiala State, and it is therefore natural that they should pay the Income Tax The refreshment room keepers have no shops in the State territory, and I therefore do not consider they are liable to this taxation . . ." They did not pay the tax

Then, Sir, there are various cases which I am not going to trouble you with under the Exhibits under letter "H" about the arrest of offenders and the details about that, because you can see the sort of thing that naturally arose from the character of the correspondence that I have already read to you That is the end of the Patiala-Jind case I am afraid it has taken a very long time, but it raises most of the questions about railway jurisdiction I can take the others very shortly. If you will just glance at them, Sir, it will probably be convenient just to take these in alphabetical order

* Agent N W Rly's letter No 125 E-17 II, dated 18th October, 1920, with enclosures

The first one is Bansda (page 275). It is not necessary to look at the Exhibits. In 1912, when the Billimora-Sarah-Kalaamba Railway was under construction, the Agent at Surat, by his letter No. R.A B./12, dated the 14th November, 1912, asked the Durbar to sign in favour of the British Government "the *usual cession* of jurisdiction." That is the prescribed form the same as the others This letter was accompanied by a ready-made form of agreement, in terms of which the cession of jurisdiction was required to be signed. No option was allowed to the Durbar in the matter, either in respect of the terms of agreement or in that of the principle underlying the demand. And they had to sign. That is a typical case and it is the kind of way in which all the States have signed this agreement where they have signed it

Then (page 338) two cases of the Central Provinces stated there shortly relate to four different States (Khairagarh, Nandgaon, Sakti and Raigarh). I think in each one of these cases the cessions were obtained from the State during a Minority under British administration. On several occasions land and jurisdiction was taken from States for railway purposes, in circumstances where either a voluntary cession by the State was impossible or the young Ruler was not in a position to resist. Thus the Government acquired land with full proprietary title and jurisdiction for the Bengal-Nagpur Railway Company free of cost from Khairagarh, Nandgaon, Raigarh, and Sakti States

Khairagarh. Three deeds dated 21st August, 1883, 9th March, 1890, and 27th September, 1890 (Aitchison, Vol. I, pages 460-463). The entire administration of the State was assumed by the British Government from 1873 to 1883 The administration of the State was under the British Government during a Minority.

Nandgaon. Government acquired land from the State by deed dated 12th January, 1891. The young Ruler of the State was not invested with full powers of Government till August, 1891 (Aitchison, Vol. I, pages 402-3 and pages 465-6)..

Sakti. In this case the Deputy Commissioner, as Political Agent for Sakti, was in charge of the State after the deposition of Raja Ranjit Singh in 1875 ,under orders of the Government of India, No 1866 P, dated 25th June, 1875. The Political Agent, purporting to act for and on behalf of the State, by deed dated 31st October, 1890, conveyed land to the Empress of India, her heirs and assigns, with full proprietary title and jurisdiction without any compensation to the State (Aitchison, Vol I, pages 466-8) After the deposition in June, 1875, the installation of his successor was not sanctioned by Government till 1892 (Aitchison, Vol I, page 204). Therefore that also was during a Minority.

Raigarh State The State of Raigarh was placed under direct Government management in 1885 owing to the maladministration of the then Raja Ghunsham Singh His successor was installed on the Gadi on 14th January, 1894. The State was under British administration in the interregnum By deed dated 19th September, 1890, the Political Agent conveyed State land to Government with proprietary title and jurisdiction for the Bengal Nagpur Railway (Aitchison, Vol I, page 403, and footnote to No. CXCII at page 468). Therefore that was also

a Minority. You have in mind my submission that cession of jurisdiction during Minority by the State when the British Government is administering it is inconsistent with the contractual relationship between the Crown and the States, and, therefore, not binding I will argue that at a later stage.

Then (page 369) comes the case of Dhenkanal. A letter dated 9th November, 1922 (No T.G. 1235), from the Political Agent and Commissioner, Orissa Feudatory States, to the Superintendent of Dhenkanal will show that the Political Agent and Commissioner was "directed by Government to request you" (the Superintendent) "to cede jurisdiction on behalf of the Minor Chief of Dhenkanal over the portions of the State territory which are to be, or may hereafter be, occupied by the railway. . . ." That was signed in the prescribed form. The compulsory cession of jurisdiction of every kind over the portion of the State through which the railway passes is prejudicial to the interest of the State. With the gradual development of commerce and industry, it may happen that railways will have to run through further portions of the State. If that would necessitate compulsory cession of jurisdiction over those portions of the State, then there is no logical reason why the existence of the State may not be altogether effaced There is also another difficulty State culprits will defy the authority of the State by taking refuge within the jurisdiction of the railway

Then the case of Indore comes (page 370) This is a case where understandings were arrived at between the State and the British Government in 1864, and then, as the States submit, departed from. The documents containing the understandings, or some of them, are rather troublesome and rather long, but I will pick out a few passages from them very shortly, if I can The document in Aitchison (Vol IV, page 206) is a memorandum, not signed by the State at all, and signed only by an Under-Secretary to Government It purports to be founded upon Kharitas, which are available The Kharitas are not quite the same as the document in Aitchison because the document in Aitchison purports to refer to the Government's right to exercise discretion in particular cases, and there is no ground for that discretion in the original Kharitas

The agreement provides.—(1) That all lands required specially for the railways, its workshops and its stations, would be given free of charge by the Durbar but no land should be given within the precincts of the railway, workshops, stations, to any trader for a shop or to any rent-payer who, under the pretence of residing or taking shelter within the area, may carry on his trade, and thus cause loss to the revenues of the State realised from taxes Further the Godowns, Dharanshalas, i e., Musafarkhanas, etc., that may be constructed outside the railway limits shall all be under the Durbar's jurisdiction.* (2) Except the right of ownership, that is sovereignty, the Durbar agree to hand over civil and criminal jurisdiction over the land required for railway purposes to the British Government, and under (3) the

* Kharita dated 21st September, 1864, from His Highness the Maharaja Holkar, read with Agent, Governor-General's Kharita, dated 1st December, 1861

Durbar agreed to give up the transit duty.* There were express stipulations as follows: (1) The British Government agree that Durbar offenders, if found within the railway limits, would be made over to the Durbar. But if they have escaped into the territory of the British Government, then it would be an ordinary case of extradition. Then: (2) The Durbar will not be held responsible for the offences committed within the railway limits unless the offences are traced to Durbar subjects. Accordingly lands were granted for the Holkar State Railway, Rajputana Malwa Railway, Ratlam Godhra, and Ujjain Bhopal Railway lines passing through the Indore territory. As in the case of the Indore Residency and the Mhow Cantonment—which I will deal with—so in the case of these lands, the original object of the grant and the conditions governing it were lost sight of, and a situation has come into existence which has done and is doing appreciable harm to the interests of the State. The Companies which are managing the railway lines have been not only using the lands for purposes quite foreign to the original object, but have also managed to secure, through the influence of the Residency, far more land than was required. Thus it is that without the State's permission, some lands are used as building sites for railway employees, some lands are utilised for purposes of shops, and others again for purposes of trade or of institutions. The Railway authorities charge rent on these sites or buildings for their exclusive benefit, and they levy fees or derive other income from plots within the so-called railway limits. As far back as 1882, as the result of the conference which he had with the Indore State Authorities, the Agent to the Governor-General, in connection with the acquisition by the railway of superfluous lands, observed that any misconception of the motives of the acquisition by the Durbar has arisen from the unreasonable demands of the railway, which the Agent to the Governor-General, misinformed, considered to be necessary and proper That was the view of the Agent to the Governor-General in 1882 (vide paragraph 27 of his memorandum dated 27th September, 1882). He further remarked that "the action of Sir H Daly was *bona fide*, but the land taken has not been utilised, and a large portion of it should be restored to the Durbar."

Then another grievance is that when the Durbar offenders escape into the railway lands, the British Authorities, in disregard of the aforesaid agreement, ask for *prima facie* evidence You are familiar with that point. All the States make that point that they ceded railway jurisdiction but did not agree that the railway lands should be British territory so as to make all the elaborate procedure of extradition applicable. The essence of the case is that it being State territory their police should be allowed to arrest offenders escaping on to the railway lands from the State territory. You can understand, I am sure, that is a matter of the very greatest practical importance in the administration of criminal justice in the State. The State also contends that the profits made are their profits, and that the British Government have no right to take them. I do not propose to ask you to look at these various documents, but I think you may take it that the summary is a fairly accurate summary

* Kharita No 88, dated 29th January, 1865, from His Highness Maharaja Holkar to the Indore Residency.

of the contents of the documents. The ground taken up by the Government of India appears just at the end of this case (page 383), in a letter No. 1500—B/I.R.F./390-13 of 15th October, 1918, from the Assistant to the A.G G., paragraph 2: "The question was submitted to the Government of India, and they have replied, on a review of the correspondence relating to the cession of jurisdiction on railway lands in the Indore State . . . that they are unable to admit that the cession of jurisdiction is for railway purposes only or to waive the necessity for the production of satisfactory evidence of criminality as a condition of extradition;" but they are willing to agree that extradition may be made for all offences and not only for those enumerated in the Extradition Act. That is the only degree of relief that has been extended by the Government. There the Government take up a dogmatic line, saying that, in their view, the arrangements made with the State are not what the State contends for, and there the State has to submit, because there is no tribunal to ascertain what the position is. It does not matter for my purposes, or for the purposes of this comment, whether the State view was right or whether it was wrong. The point they make is that there ought to be some machinery for getting impartial adjudication upon a pure question of law like that—simply what was the contract made, and what is its meaning? I am not going to trouble you with what that contract was, because you are not concerned with giving relief to any particular State.

The next one is Jodhpur (page 444) There are two different railways concerned in this case, one is the Jodhpur-Bikaner line, with which you are all familiar, and the other is the B B & C I Railway The Durbar retained full jurisdiction but entered into an agreement in 1889 to cede full civil and criminal jurisdiction over the lands occupied by it whenever the Government of India considered it desirable. (Aitchison, No. LXX, Vol. III.) That is to say, it gave the option to the Government to ask for it at any time The terms of that agreement are in Exhibit "E" If you would look at Clause 7 that is the only one that I need trouble you with. "The Jodhpur Durbar shall exercise complete authority over the portion of the line situate in its territory subject to the condition that His Highness The Maharaja shall cede full criminal and civil jurisdiction over the land occupied by the railway whenever the Government of India consider it desirable." You notice what they undertake to cede is full criminal and civil jurisdiction I think that is the exact phrase used in the *Hyderabad* case, which went to the Privy Council Then, in 1900, which was after the Government had digested the effect of the *Hyderabad* case, and framed their prescribed form to get over it, they called upon the State to sign the prescribed form, and the State was compelled to do so I want to submit there that plainly the undertaking of the State was limited to that kind of cesser of jurisdiction which is defined in Clause 7 of the Agreement of 1889, and that the Government could not, by purporting to exercise that option under that clause, put upon the State the obligation to assign a wider cesser of jurisdiction than that which it had agreed to assign; and that if, and in so far as, the new form, on its proper interpretation, would confer wider jurisdiction, it cannot be held to have done so in the Jodhpur case, because it must be treated as meaning the

kind of jurisdiction which Jodhpur had agreed to assign under the clause of the original agreement; that is to say, the general words of the prescribed form must be read in the light of the contract which it purported to carry out. Professor Holdsworth, I am sure, will follow the argument that I suggest upon that. The correspondence that led up to it begins with Exhibit "G" (page 446). It is an interesting correspondence because it throws a good deal of light on this type of question between the States and the Paramount Power. I need not read the initial letter (No. 767 dated 29th December, 1893) of the Jodhpur Durbar pointing out the large capital that it had to advance, but it asked definitely (18th December, 1894) to be allowed to retain the civil and criminal jurisdiction. The Government replied (No. 414 dated 7th February, 1895), the second paragraph: "The Government regret they cannot accede to the Durbar wishes, or accept the Agent to the Governor-General's proposals in this matter, for in June, 1891"—I think this is an important date in the railway jurisdiction case—"it was very clearly laid down that so long as a Railway is isolated in one Native State the British Government is not ordinarily concerned to exercise a wider authority than, as Paramount Power, it thinks fit to assert throughout the State generally, but that as soon as any line of Railway passes through the territory of two Native States or through British territory as well as that of a Native State then it becomes necessary to obtain from the State or States concerned a cession of jurisdiction, in order to avoid the inconvenience arising from a multiplicity of jurisdiction. In June, 1891, it was also laid down that in future the policy of the Government of India will be uniformly and strictly enforced. With the proposed extension of the Railway the circumstances change: it will then pass through both British and Native territory and will become part of a through line of communication. A cession of full jurisdiction will, therefore, be necessary under the above-mentioned orders. In similar cases jurisdiction has been ceded" by other States.

What I want to call to the attention of the Committee is that record of the definite adoption by Government in June, 1891, of a policy from which it would allow no deviation. There is no consent there; it is the adoption of a policy to be applied from then onwards, making a resort to the signature of forms a mere form and not a real consent any longer; and my submission is that as from June, 1891 it is quite impossible for the Government to rely upon any document signed by any State as representing a real agreement. Some attempt on the part of the Durbar at further bargaining regarding cession followed, but in 1895 the Maharaja died and a minority administration was established. The minority administration left the matter entirely in the hands of Government. That is again an instance of what you have seen so many instances of already. What the minority administration wrote was (No. 49 dated 23rd January, 1896): "As regards jurisdiction question, the wishes of this Durbar were conveyed to the Supreme Government during the time of His Highness the late Maharaja, but now the Durbar leaves the matter entirely in the hands of the Paramount Power, which is the trustee and guardian of the country during the minority administration and whatever the benign Government, after taking into consideration the

circumstances as well as the staunch loyalty of the Durbar, decides in the matter will be accepted with due deference."

Then in 1899, three years later, the Durbar is asked (Letter No. 2316 dated 7th July, 1899, from the Resident, Jodhpur) to be "good enough to make in the prescribed form herewith attached, cession of jurisdiction on all that portion of the Jodhpur-Bikaner Railway, including any extensions, which lies within Marwar territory. . . . This arrangement I am to say will no doubt commend itself to the Durbar, and I am to request that you will kindly convey the Durbar's formal assent to the same." That is the position; there is no choice · it is the execution of Government orders. They attempted (vide letter No 1191G dated 30th August, 1899) to get clauses put into the prescribed form which would make things less onerous for the Durbar, but those proposals were turned down and the Resident on the 5th September, 1899 (no reference quoted), said "I find the Government of India have laid down, after consultation with the Secretary of State, that in future declarations are to be obtained from Native States for the cession of 'full and exclusive power and jurisdiction of every kind' over the lands in the State occupied by Railways . . . It is useless to send on the draft agreement ceding simply 'full and exclusive police jurisdiction' . . . so I hope the Durbar will reconsider the question and send me a fresh letter . ." Then the Durbar try to get another clause put in (letter dated 9th September, 1899—no reference quoted) "If we omit the word 'through' it would not only be against the clearly worded assurance held out and the policy pronounced, but will prove highly deterrent to any further sinking of the Durbar capital in extending feeder lines to its Railway, so much necessary for opening up the country and developing its resources" It is a point that really affects the development of the country. What is wanted is to encourage the States to invest their capital in further railway enterprise They will not do it if they think the only result will be that they will have to transfer the territory, only retaining what Mr Crump called nominal sovereignty. It seriously impedes development Finally they replied · "If a separate assurance from your good self be given to the Durbar that the Raj officials shall have every right to arrest the offenders and search the suspected within the said limits for offences committed within Marwar, the Durbar is prepared to omit the clause from the Agreement." That is a perfectly hopeless attitude really to adopt for an independent person in a postion to say "No" Of course, the truth is that they could not say "No."

The Resident replied on the 7th April, 1900 (no reference quoted): "The Durbar appears to apprehend that the Government of India aim at exercising certain rights of sovereignty combined with jurisdiction which they have not exercised heretofore. This is not the case They do not ask for a cession of sovereignty any more than they have done before But it has been found necessary to remove from the existing agreements for the cession of jurisdiction certain doubts to which a test case in the Law Courts showed that those agreements were exposed The present form has been settled in consultation with the Secretary of State for India in England and does not admit of variation . The distinction, which the Durbar desires to draw between branch and isolated lines and through lines, is not one

which it is necessary or profitable to introduce, as it has no practical value at this moment. The suggested proviso in regard to the arrest of offenders on railway lands is in reality devoid of practical importance. Such offenders will be made over to the Durbar authorities in future under precisely the same arrangements as at present. There is no intention of modifying the existing rules in this respect." Well, Sir, assuming that the Durbar had not perused the report of the Privy Council case, or that they had not understood it, the paragraph there was very misleading. The report said in plain English to a lawyer who could understand it: No cession takes place unless there is a real consent, and consent is a thing that cannot be compelled Then the letter goes on: "Gwalior, Kotah, Tonk, Hyderabad, Kashmir, Bhopal, Mysore and other States have all, it is believed, signed precisely similar forms without demur. In these circumstances an objection from Jodhpur alone would come with bad grace. . . . ." Now, Sir, I have looked at Aitchison. Of all those States there mentioned Gwalior is the only one recorded in Aitchison as having signed the form. I have looked through every one of those States. Gwalior did sign in 1899 for one railway, but none of the others are recorded as having signed at all, and Aitchison's practice is to record all those railway agreements in the prescribed form. There are a great number of agreements at different times.

Colonel Peel: Might I ask you a question?

Sir Leslie Scott: Please.

Colonel Peel. Do you say they did not sign?

Sir Leslie Scott. All I said was that they are not in Aitchison and Aitchison's practice is to record all those that did sign.

Colonel Peel: Do you mean that they did not sign?

Sir Leslie Scott: That is the doubt that I desire to express I cannot make any assertion; I do not make any assertion. You are probably quite familiar, Sir, with Aitchison, and you find dozens of forms. I mean practically all the railway agreements do appear in Aitchison. You observe what the writer puts in, "it is believed" showing that he did not feel sure in his own mind. The last sentence of the letter is: "The Agent to the Governor-General feels confident now that the above facts have been thus fully explained to the Durbar, they will not persist in maintaining an attitude of distrust, which it alone has adopted among all States in India. . . . ." Then on the practical question of there being really no difficulty in leaving the jurisdiction with the States, the long letter (Exhibit "H") states how Jodhpur regarded the matter (No 3928/Ry/5, dated 11th June, 1909). I only want to read one sentence: "The honest efforts that the Durbar are making to improve their system of administration and how alive they are to maintain their reputation are no secrets to the Supreme Government Through the kindness of the Supreme Government they have been allowed to exercise jurisdiction of all kinds over the line even after it has been ceded, and it can be said without demur that during this period of ten years there has not been a case against which a finger could be raised" That is the case. I do ask you to pay a great deal of attention to that aspect of the matter These States say that there is really no practical objection to allowing us to have jurisdiction at any rate in those cases where a considerable

length of line is continuously in State territory. That that is so is proved by the way in which, for instance, with the Jodhpur-Bikaner line the jurisdiction was left with those two States for a very long period of time.

Secretary: It is with them now; it has never been taken from them.

Sir Leslie Scott: I thought that was so but I did not like to state it, because I was not quite sure. I am much obliged. Then that is the Jodhpur-Bikaner line.

If you will turn back to page 444, we will deal with the B.B. & C I Railway shortly. The agreement there was made in 1866 I think. You will find the agreement set out on page 452 (Aitchison, No LXIII, Vol. III). I am not going to trouble you to read it, Sirs The preamble indicates that the Durbar accepted the arrangements in submission to the Imperial will. That is quite plain from the preamble. The Durbar regarded the new line as threatening loss to their income from transit duties which they still exacted in the State To-day the Durbar exercise no civil or criminal jurisdiction. The Durbar's fiscal jurisdiction to levy customs duty within the railway area is accepted and acted upon. There has been the cession of the civil and criminal jurisdiction, but here in this particular case the Government, as you know, have not attempted to claim the fiscal rights The Durbar recently in 1922 (under a Regency Council) ceded excise jurisdiction to the British Government, on condition that any revenue derived therefrom is paid to the Durbar Well, Sir, the point I want to draw to the attention of the Committee is the complete absence of any consistent policy on the part of the Government, and to show that it is quite impossible to say that there are any principles underlying the practice of the Government in regard to these railway questions.

If you turn to Exhibit "K" you will find a letter (No 1140) from the Resident W R States to the State Council, Jodhpur, dated 28th March, 1921: "With reference to the correspondence ending with your letter No 1740, Cust 2, dated the 10th July, 1920, regarding the claim of the Marwar Durbar to levy customs duty on articles imported by the employees of the Bombay, Baroda and Central India Railway for their own use when employed on railway lands situated in the Marwar State, I have the honour to inform you that the Government of India have decided that the Durbar are entitled to claim import duty on dutiable articles imported by the railway employees from outside the State" Well that is right, but if it is right in Jodhpur, why is it wrong in Patiala?

Colonel Peel You say there is no distinction, but is not there a distinction between Railways built and owned by the State and Railways built and owned by the Railway Company, or by the Government of India?

Sir Leslie Scott I cannot see any difference in principle, and I do not think that is the difference in question here I will look at that. There are two points involved in your question

Secretary: The reason why jurisdiction was not taken from Jodhpur and Bikaner was because they had built and owned the lines.

Sir Leslie Scott: Then why was not the Rajpura line left with Patiala which built it?

Secretary: I know that is the reason why jurisdiction was left with Jodhpur and Bikaner. The other line that runs through Jodhpur, the B. B. & C. I., was built and owned by the Government and jurisdiction was accordingly taken from Jodhpur. There is another consideration; in Patiala there are a large number of breaks of jurisdiction whereas in Bikaner and Jodhpur there are vast lengths, hundreds of miles, which run through States without any break of jurisdiction at all

Sir Leslie Scott: Take another line bearing on the same point, that is the Itarsi-Bhopal line. His Highness of Bhopal, the Nawab Sahib, who is sitting next to me, tells me they have no jurisdiction over that line—they have ceded that jurisdiction—that they have been trying for many years to get back their fiscal rights over the Railway land on that line, and that it was wholly built by them. I believe their representations may meet with success at an early date, but they have not yet I will look into the various lines and see if I can get an answer to Colonel Peel's point as a whole by putting the points together.

Chairman: I understand that at the period which we had reached, somewhere in the last century, the whole policy of the Government of India was to deal with each State separately, and not to lay down a number of principles.

Sir Leslie Scott: Yes, I think that is right, and that is one of the main grounds of my respectful complaint on behalf of the States, that that whole policy is wrong What I am submitting, of course, is that all these matters, nearly all of them, are matters of legal right and legal obligation to be ascertained by finding out what the contractual relations are between the Paramount Power and the States. Once you have done that, then, as has been already indicated, the States will be most anxious to fall in with any reasonable arrangement. I am not here to say that co-operation is not desirable in regard to Railway administration, jurisdiction and everything of the kind; it obviously is. In the first instance, the question is, what are the rights? Once you have ascertained what the rights are, then it is not difficult for reasonable people, as the Princes are, to come to a satisfactory arrangement which will serve the convenience of everybody, British India and the States That is what they want But you must first of all, I submit, get on to the solid ground of knowing what the people's rights are, and it is the disregard of that aspect that the States desire to bring prominently to the attention of the Committee; and the very fact that they treated all the States separately, each according to what they thought in their discretion was right for that particular State, in itself proves that they were not acting with regard to rights and obligations, but with regard to what they thought was, in the particular circumstances, on the whole desirable. It illustrates that very clearly.

Chairman: Let us get on.

Sir Leslie Scott: That is all that I need refer you to, Sir, regarding Jodhpur.

The next one is Rewa (page 527) It mentions the Railways—the two lines originally built (the E.I. Railway, now the G I.P. Railway, and the B N. Railway) With regard to the second one, the jurisdic-

tion was ceded during a Minority Administration (Aitchison, Vol. V, page 251). Then in recent times there was the Central Indian Coalfields Railway of the Bengal-Nagpur Railway and the Durbar fell into line with the demands that were made upon them. That there was no real consent in any one of the cases I want to show you. If you look at Exhibit No. 1 (page 529)—there are very few quotations I want to make here—that Khureeta from the Maharaja (Aitchison, Vol. V, page 249) begins: "According to your instructions, the required conditions are entered in the Agreement . . . "—and that that obviously could not have been a willing agreement appears from the second clause which he could not possibly have agreed to of his own free will. "All disputes between the officers and the dependents of the Railway and the subjects of the Native States outside the Railway limit shall be heard and settled by the Political Officers" You observe that that shows that the form of agreement was one drafted for all the States through which the Railway went, not merely the State of Rewa, and it is perfectly clear that the Ruler would not have agreed to that readily Then, as regards the second Railway, you will see it was during a Minority Administration, in 1883 (Aitchison, Vol. V, page 251). "We, the Sardars of the Council, came to Satna this day, and the Superintendent of Rewa has informed us that the Government of India propose to open up the Umaria, Johilla and Sohagpur coalfields, and to construct a Railway from Katni to Bilaspur through the above-named places." I am not going to ask you to read through that, Sir, but if you do read through it, you will see that the language must obviously have been put into the memorandum by the Superintendent, and if you look at the penultimate clause, the last three lines of it: "The Government will, of course, act as it thinks best in respect of the terms on which the coal mines will be given on contract, the amount of coal to be extracted and all other matters connected therewith" A delightfully trustful point of view with which to do business! Now, Sir, I do not myself think that, beyond showing you that the cessions were made without real consent, there is anything in the history of the making of the cessions The question of Railway jurisdiction is one which, the Durbar feel, should be adjusted early. It is a question which affects most of the Durbars And there has been some useful discussion of it already At this stage, however, the Durbar only wish to remark that they are most reluctant to parting with *all* jurisdiction on even the main Railway routes, still more so on the branch lines—portions of which run through Rewa territory With this end in view, they would be prepared to accept the following two points as a satisfactory basis for future discussion Well, I do not care to put two points like that forward by themselves, and I will not trouble you with the particular points that they make now You will see what they are

The other matter raised by this State is one as to a claim by the Railway Authorities to the right to collect all forest produce growing within Railway land, and to keep the profits for themselves It is a long correspondence and I am not going to ask you to go into the details of it, but it illustrates the kind of disputes that arise, and my submission is that in these normal cessions of Civil and Criminal jurisdiction over land that has been appropriated simply as the site of the Railway, with the sovereignty not ceded, it cannot have been the

intention of the parties that the profits of the land should go to the Government or the Railway Company. I am not going to trouble you further with the Rewa Case.

Then the next Railway case is Tonk (page 556). It is a very short one. This is a good example of the injury done to the Rulers of the State, to the interests of the producers of the State, and to the public of foreign countries by the retention of every kind of jurisdiction over Railway Limits by British Authorities in their own hands. In the Nimbahera District of the Tonk State, a superior variety of cotton is sown on an extensive scale, which fetches a good price in foreign markets As this cotton has an established reputation in foreign markets, people from British India and the neighbouring States of Rajputana *have taken to booking their cotton to Nimbahera* Railway Station, and from there re-booking it to various destinations—in order to make it look as if it were the high quality cotton coming from Nimbahera Once consignments of cotton are definitely booked to Nimbahera it is right to contend that these consignments have been imported into Tonk State and the fact of their being re-booked to their destinations cannot justify the contention that these consignments when arrived and taken delivery of at Nimbahera are still in transit. The position that really arises is that the consignment has changed hands and a trade transaction has taken place, even though the consignor or the consignee at the place whence the consignment emanated, and at Nimbahera and subsequent destination be the same. The moment these consignments are re-booked the State becomes entitled to Customs duty, but it is prevented from taxing these consignments and it is subjected to a loss of revenue. But this is not the only evil which results from the exclusion of even the State's fiscal sovereignty from Railway limits The cotton is not Nimbahera cotton but by its being booked from Nimbahera it is treated by the purchasers as such The purchasers will not continue for long to be deceived. They will soon discover that the cotton which arrives from Nimbahera is no longer of the quality which they thought it was. They will, therefore, no longer pay the price which they have been called upon to give for the real Nimbahera cotton In this way a very grievous injury will be inflicted upon the cultivators of the Tonk State and for their great loss the policy of excluding the State's jurisdiction from railway limits will be entirely responsible.

Colonel Peel: The cotton merchants are rather more responsible for this grievance in the State than the railway.

Sir Leslie Scott: The cotton merchants are responsible, but the Tonk State draws to the attention of the Committee that there are many wicked people in this world, and all they ask is that they be allowed a reasonable opportunity of stopping their machinations

Colonel Peel: It does not stop their machinations.

Sir Leslie Scott: No it does not. It wants merely to be able to control it If they could control it they could very quickly attach to the true cotton certificates of the cotton having been grown in the Nimbahera District. However, I note, Sir, that your sympathies are all with the State.

You will be glad to hear that that is the end of the railway cases I apologise for having been so long, but you will see that there are a number of questions of considerable importance raised by them. I

think I have shown you enough to prevent your saying that they are merely isolated accidents.

I will take next the Kashmir case (page 455). You will remember where the Residency is at Srinagar.

Chairman: Yes.

Sir Leslie Scott: Near the Residency and to the north of it is an area known in Kashmir by the name of the restricted or prohibited area. Might Mr. Wattal just come and show you on this map where it is?

Chairman: Yes.

Sir Leslie Scott: Might he come round.

Chairman: Yes

Sir Leslie Scott: Mr. Wattal, go round and show it to the Committee. I borrowed this map from the India Office to show you, it is rather on a small scale.

(Mr. Wattal pointed out to the Committee the position of the restricted or prohibited area on the map).

Sir Leslie Scott: There is in Srinagar an area extending from the Amira Kadal bridge to the Gupkar Gap, which is known as the restricted area. The Resident claims that no building—State or private—should be erected here without his previous permission During the time that the Residency was in authority—that is to say during the British administration you will remember—no protest was raised against this. But when His late Highness was restored to full power he asked his Chief Minister to raise the matter personally with the Resident As a result of this personal conversation the Resident wrote (No. 393/G/D.O., dated 19th August, 1921), that "there is no wish to restrict or control His Highness's free action in any way, still I think it would be more courteous and in keeping with the amenities of the case to consult the Resident (or Residency Surgeon)" Though the matter was placed on courtesy and amenities, the Resident protested (No. 355, dated 4th February, 1925), when the rules were amended in order to vest in the Government of His Highness the right of giving permission to build in such area He thought that the Resident, as the Viceroy's representative in Kashmir, should have a voice in the control over the area in which he resides and which is largely occupied by the European community The matter was personally discussed between the Foreign Minister and the Resident (Mr E B Howell) When it was pointed out that the State could not be expected to consent to the present restrictions, the Resident declared that he would be satisfied with an assurance from His Highness's Government that congested buildings will not be permitted near the Residency. When the views of the Residency were officially communicated it was found that the assurance demanded was nothing less than a modified form of the old restrictions His Highness' Government has refused to agree to any kind of restricted area within the State, and the matter rests there The Resident also claims special jurisdiction in this area as well in adjacent tracts, without authorisation For example, the Assistant Resident issued in 1915 (5th November), the following order to the Motamid Durbar. "Noise, etc., which can be heard from the prohibited" (meaning the restricted) "area may be punished as if committed therein Should any of your orders be reversed or appealed, you can move the Residency to get the order made pukka." This

usurpation of jurisdiction within the so-called restricted area and the places immediately bordering it is not based on any cession by the State, or even authority from the Government in India, even if the Government of India could grant such jurisdiction in a State. That is a short statement of the facts, and it is interesting as showing the danger to the State of the growth of usages, which have no legal origin, but which after continuing for a certain length of time may be treated as binding in some kind of way. You see that aspect in a letter of the 19th August, 1921 (No. 393/G/D O.), from Colonel Windham, who was then Resident: "Though there is no wish to restrict or control His Highness' free action in any way, still I think that seeing what usages and custom have been hitherto in respect of the Residency area it would certainly be more courteous and in keeping with the amenities of the case to consult the Resident (or Residency Surgeon) and giving him a chance of expressing his views, before allowing any building to be erected in the area in question. Our conversation on the point was so short and hurried, that I did not gather very precisely what your reference to the matter amounted to." Let me say at once on behalf of His Highness of Kashmir, that a matter of courtesy is one thing, but the question of a right to interfere with the free discretion of the *State is a very different thing. On the 4th February, 1925, Sir John* Wood wrote (No. 355): "I have received your demi-official letter No. 2349, dated the 19th January, 1923, regarding construction of buildings in the restricted area in Srinagar, and am much obliged to the Durbar for consulting me on the subject. I notice, however, that the draft rules forwarded with your letter contain no provision (similar to rules 4 and 7 of the existing rules) for consultation with the Resident in regard to the construction of buildings or enclosures within *the boundaries of the restricted area.* This is a very drastic change in the existing procedure, and I feel bound to take exception to it The question, however, as I have already intimated, appears to be one suitable for personal discussion with a view to arrive at a mutual understanding: and I shall be glad if an opportunity is given to me to place my views before the Senior and Foreign Member at some convenient date, preferably in Srinagar No one can be more anxious than I am to maintain the privileges and respect the rights of His Highness the Maharaja in Council; but I think it will be conceded that the Resident, as the Viceroy's representative in Kashmir, should have a voice in the control over the area in which he resides and which is very largely occupied by the European community." That I venture to submit is a claim that has no justification. It is not put forward as a mere request for courtesy, "I know you will be anxious to help us, and consult our convenience and so on" If it were put in that form there would be nothing to be said, if the form represented the reality, but when it is put here in the form of rule, and a claim that the Resident should have a voice, then it is just as if an ambassador here in London, living in the neighbourhood of the Park, wrote to the First Commissioner of Works and said, "I am entitled to have a voice in what you do in the Park." You observe the phrase there· "A voice in the control over the area in which he resides." What is the area in which the Resident in Kashmir resides? There is the area of the State; there is the area of the Valley of Srinagar, which I think contains 1,600 square miles; there is the town

of Srinagar; there is one-half of the town of Srinagar. What is it? You do not know where you are. The very fact that it must necessarily be absolutely indefinite of itself shows that there can be no right. Then there is a note by the Foreign Minister on the Resident's request in conversation for an assurance about congested buildings, and one of the Assistants to the Resident writes (no reference or date quoted—letter signed by M. C. Sinclair): "I am desired to refer to correspondence ending with your letter dated 9th May, 1925, and to state that the Resident, after due consideration, is of opinion that the time has come when the object aimed at by the State Council Resolution of 1890 can and should be secured without the intervention of the Resident. He is, however, naturally anxious for an assurance that the amenities of the area in which the Residency is situated will not suffer in consequence of his withdrawal. I am accordingly to say that if His Highness' Government will give an assurance that within the area defined in the accompanying schedule both the erection of new buildings intended for residential or commercial purposes and the reconstruction of existing buildings in such a manner as to alter their nature, or materially to increase their plinth area will be prohibited, the Resident is ready to agree to the cancellation of the old Resolution, and to relinquish any powers which he may at any time have exercised under it." That was really out of the frying-pan into the fire Some Rules had been in existence before, and His Highness the Maharaja is informed that the Government were willing to give up the Rules, "if you will enter into a binding agreement with us, which will tie you for ever" That is all there is to be said about the area itself. Then as to the district round the area, there is this one document which is important. There is a note here by the Motamid Durbar to which an order is attached by the Resident or the Assistant to the Resident. The date of this is 1915, under the old régime, and the Motamid's note was sent to the Resident for orders from him in connection with that restricted area. Quite shortly, it raises the question of noise being heard in the Restricted Area from the adjoining districts. The result is that the Resident, or his Assistant, passes an order (dated 5th November, 1915) which is to this effect "As these offences are not covered by any written laws, you should interpret the Standing Order as may seem best in the interest of the Prohibited Area, i.e, noise, etc, which can be heard in the Prohibited Area may be punished as if committed therein Should any of your orders be reversed or appealed, etc, you can move the Residency to get the Order made *pukka*" That shows how what undoubtedly in origin must have been mere courtesy of the Kashmir Government crystallised into usage, and was made to serve as the basis of a claim of right, extending not only to this so-called Restricted Area, but to some indefinite *penumbra* outside it That is that case, and I have nothing further to say, except to submit that it is an illustration of the way in which practices grow up which encroach upon State rights

Then the next one I propose to take is the case of Baud (page 276) This is a very long memorandum, though it is all relevant to the point, but I am going to treat it, by your consent, quite shortly, and ask you to read the memorandum and read the Schedules and Exhibits separately The gist of it is on pages 276 to 278 You remember where Baud is. It is in the Eastern part of India The Raja of Baud was originally an independent Chief When the Mahrattas over-ran his

territories, they levied tribute on him, and continued to receive it from him for a period of time. He was originally the Raja of Baud and Athamalik. The highlands of Baud (that is the Khondmals) are as much a part of the Baud Raj as the lowlands. They have been so from time immemorial The highlands or hill-khonds are no different from the hill tribes in the *mals* of the other neighbouring States. They have their time-honoured liberties and privileges, and cannot brook any but a limited control over them. None the less, "the Raja of Baud is the sovereign of the hill-khonds, as he is the sovereign of his lowland Hindu and Khond subjects, and all the hill-khonds owe allegiance to their Raja and are attached to his Raj by strong feelings of loyalty." (*vide* letter from C. Beadon, Esq , Secretary to the Government of Bengal, dated 28th September, 1855) In 1845 was established the agency for the suppression of Merish (human) sacrifices, resulting in the complete supersession of the Raja's authority during the period the Agency was subsisting. The measures adopted by the Government in the highland regions for the suppression of Merish sacrifices, as also those necessitated later on by Chakra Bisoi's rebellion, tended to weaken the authority of the then Chief, Raja Pitambar Deo, over his Khond subjects. Both these causes were extraneous causes, over which the Raja had no control, and for which he could not be held liable. In 1855 Mr. Samuells took over the Khondmals under direct management, ostensibly with the view of establishing peace and order. That such was the object, and that the Khondmals were then admittedly part of the Baud Raj is evident from the *paruana* dated the 17th January, 1856, issued by Mr. Samuells himself to Raja Pitambar Deo of Baud, calling upon him to pay the expenses of management incurred for the management of the Khondmals The Raja was willing to pay the same on certain conditions, and on the express understanding that the suzerainty of the Khondmals was to be restored to him after peace and order had been fully established therein The Khondmals were not included in the Scheduled Districts Act passed in 1874 That was the Act dealing with districts of British India, as you will remember, and if it had been British India, it would have been included in one of the Scheduled Districts There was a proposal to include the Khondmals within British territory and make them a scheduled district. But the idea was abandoned on the ground that they had never been annexed, and, therefore, could not be treated as British territory. The Administration Report of the year 1834 commented on the anomalous position of the Khondmals They belonged to Baud, but they were in the occupation of the British Government, and some people thought that they were neither one thing nor the other. Even as late as 1894, when Regulation I of 1894 (of the District Regulations* of that year) was passed, the Khondmals were described in Section 2 of that regulation as "that portion of Killa Baud which is known as the Khondmals" This clearly shows that up to 1894 the Khondmals, although under British management, were avowedly a part of the State of Baud. It does not appear for what reason and on what justifying grounds they were then taken out of the "Killa" of the Raja of Baud. Even Regulation I of 1894 cannot be taken to be a definite act of annexation, for it was not followed by

* Angul District Regulation, 1894

any overt act which would convey to the Raja of Baud that the Government intended to annex the Khondmals permanently. Let me pause there for a moment. Annexation in 1894, of course, is out of the question, because it would be a direct breach of the Royal Proclamation of 1858 There has been no annexation since 1858, except for actual misconduct, and I am not quite sure there has been even for that cause either. I do not think there has been any instance, I speak subject to correction, but you will know much better than I My impression is there never has been any attempt at annexation since before the Mutiny.

Chairman: No.

Secretary: Burma.

Sir Leslie Scott: I meant in India.

Chairman: You mean the annexation of an Indian State to British India—there has been none, but there has been an interchange of territories.

Sir Leslie Scott: That is another matter.

Chairman. By arrangement with the Maharajas, but not annexation.

Sir Leslie Scott: No annexations Therefore the argument that the States put up here about there being no annexation, is not worth troubling about

Chairman No, I do not think you need trouble about that

Sir Leslie Scott: That is what I thought That being so, the position is a very simple one, and it is not necessary for me to read the rest of the case It is very long and very interesting, but I do not want to spend time over it I do not know whether you remember, on the very first day, at the very beginning of this volume, I referred to the State of Baud In that case there were three alienations of territory; the Khondmals was the second of them. If you would not mind just glancing for a moment at the map of Baud, you will see where those Khondmals were. It is the hill territory, if I remember rightly, south of Baud Am I right in thinking that it is the hill territory to the south of Baud included in that area between the two wings of the State of Baud extending south-east and south-west?

Chairman: Yes, I should think so

Sir Leslie Scott I do not know whether the dark line running from Duspalla up to the south-west corner of Baud indicates where the boundary is

Secretary: That is the boundary of the Madras Presidency

Sir Leslie Scott Thank you, I did not know that If Baud on the map to-day included Athamalik, the other State taken away from it, and Sonpur on the north, and the Baud Khondmals on the south, you see that the State would be a very large State Sonpur is marked yellow, to the north-west, and Athamalik is red, to the north-east Baud feels very strongly, on all principles, that the state of possession and power in which the British Government found it when they first established contract by treaty with Baud is a state of possession and power in which it ought to be according to the principles that have been enunciated so clearly in connection with Kathiawar, which, you may remember I referred you to That is the principle they call in aid, and they say: That is the underlying principle of the whole para-

mountcy relationship. We handed over to you our external relations so that we could not go to war, we could not prevent a cession of our territory, we had to rely upon you and you gave us your undertaking that you would protect us; we ask you now, therefore, to do so That is the principle underlying it. Of course, you are not concerned with any remedial steps for any particular State, on this enquiry.

Now the next one is the State of Bhor (page 318). There are two detached villages This is a curious case—an instance of a case showing how the Durbar was deprived of its right to some groves of palm-trees on the strength of a decision of the High Court of Bombay in a suit to which the State was not a party. There are two palm-tree groves named Sutar Rai and Rai Keneri Tamani belonging to one Appaji Balwant Kulkarni, an inhabitant of Pali, Taluka Sudhagad, of the Bhor State. They are situated near the villages of Rabagaon and Siloshi belonging to the British Government But these groves were included in the Jamabandi (revenue) of the detached village of Pali belonging to the State. There is no question about it that that village of Pali does belong to the State. At the time of the treaty of interchange of territory (Aitchison, Vol. VII, pages 173-180), concluded in the year 1830 between the Honourable the East India Co. and the Pant Sachiv of Bhor, the village Pali was given with full sovereignty (Article 2) to the Pant Sachiv. The details of the *jamabandi* of the village specifically mentioned and included the above two Rais, although they were detached from that village and surrounded by British territory on all sides. The *Jamabandi Chitthas* and the accounts which have been prepared every year since 1829 (vide Article 1) and even from before, always showed these Rais as part of village Pali. The Durbar uninterruptedly enjoyed and exercised its sovereignty rights over the Rais till about 1895 for a period of more than 60 years. The owners of these Rais never paid anything to the British Government for these Rais for all this time. On the 1st October, 1900, Mr. Bagnell, Collector, Kolaba, published a proclamation at Pali, Negothana Tabgamsilosri and other places. It informed the public that Satar Rai and Rai Kenani Tamani were within British territory and that therefore the Bombay Abkari Act (Act V of 1878) applied to them: further that anyone who without the permission of the Collector of Kolaba taps the palm trees thereof or sells toddy or manufactures liquor therefrom shall be liable to punishment under the said Act and will be prosecuted according to law (British law). Criminal complaints were also lodged against the owner of the Rais Appaji Balwant Kulkarni, owner of the Rais in question, having suffered damage by virtue of this order, filed a civil suit against the Secretary of State for India in the Court of the District Judge of Thana in the year 1901. The District Judge in a reasoned judgment held *inter alia* that these Rais formed part of the territory of the Bhor State. But this decision was reversed in the year 1907 by the Bombay High Court on an appeal lodged by Government against the decree of the District Judge. The State of Bhor was not made a party to the suit and had no notice of it. I should like to add that the judgment of the District Judge was a very long and carefully reasoned judgment, while the judgment of the High Court at Bombay gave no reasons at all, but simply allowed the appeal with nothing more. From the documents attached to this

memorandum it appears that somewhere after 1895 when the Government first set up its claim to the Rais, the State of Bhor pressed its claims to the same on the British Government. It also appears that the Government, ignoring the arguments of Bhor, decided in 1900 that these Rais belonged to itself. This decision was repeated in 1905 by a Government Resolution (No. 4535, dated 3rd June, 1905) Now you observe that between the decision of the District Judge in 1901 and the appeal being allowed in 1907 intervened the Government Resolution saying: "This is our property." It further appears that when the State asked for a copy of this latter resolution its request was refused. On the 13th day of July, 1907, the Political Agent, Poona (No Pol./308), sent to the Chief of Bhor copies of the judgment of the High Court of Bombay "for information and guidance with reference to the correspondence ending with his (the Chief of Bhor's) No. 83, dated 28th March, 1906." Later the Chief of Bhor again and again wrote (No. 68, dated 10th May, 1910, and No. 158, dated 6th September, 1910) to the Political Agent, Poona, stating his claim to the Rais, enumerating the arguments in support of that claim, asking for authorised copies of some documents, and requesting the Government to reconsider the question The Political Agent said (No. Pol /40, dated 13th January, 1911) he would not request Government to open the question raised

Well, the points are obvious I do not expect you to form any opinion on the question of right, as to whether the State of Bhor had the right to these villages, or whether the Government had, it is not within your province; but the point that the State of Bhor wants to make is that under the procedure followed it has never had a hearing. It was not made a party to the proceedings It does not complain. That was for the litigants. It has no ground of complaint that it was not made a party to the proceedings, but the fact is that its case was not heard.

The second point is that the Government of India passed a Resolution in 1905 (No 4535) precisely opposite to the decision of the District Judge without consulting the State of Bhor and without giving the State of Bhor any opportunity of being heard Whether the Court of Appeal was aware or not of the Resolution of 1905 does not appear. At least, I do not think it was, I do not remember At any rate, the decision of the High Court does not bind the State, because it was not a party to it, and it has never had any judicial enquiry.

Colonel Peel: It could not have been a party under any circumstances, being a State, could it?

Sir Leslie Scott: I do not know what form the proceedings took. If it was a claim for a declaration of title it may have been possible. I express no opinion upon that. I am assuming that it has no grievance at all on the ground that it was not made a party. I am not suggesting any grievance whatever on that head All I am saying is that a decision made in legal proceedings to which it was not a party ought not to be treated as binding upon it, on ordinary grounds of fairness and law. The complaint that Bhor makes is that the decision of the Government of India was arrived at without the State being given the opportunity of a judicially conducted enquiry; not litigation in the Courts but a judicially conducted enquiry where it could have brought its evidence forward, which, according to the

facts stated here, seems to be evidence of a very powerful kind. The real point for the Committee, for you, Sirs, is that it illustrates the need for the institution of a system of judicial investigation by an impartial tribunal of all justiciable issues. What I mean by a justiciable issue, as distinct from a political issue, is an issue which depends upon a dispute of fact or upon the ascertainment of the law really applicable to the case. Here it may have been partly law; it was mostly apparently fact But there may have been some law in it It was obviously essentially a justiciable issue, because it was simply a claim to a right of property, or an equivalent to a claim to a right of property, namely, sovereignty. I think it is a matter for very careful consideration as to the best judicial tribunal for cases of the kind. I shall deal with that topic in my final remarks as to practical constructive proposals But what I am desiring to insist on now is the need that such a tribunal should exist. You cannot have fairness and you cannot give the States a feeling that they have had their cases properly and impartially investigated in any other way. You see here who gave the decision that bound the State—the Government of India in its Resolution of 1905. They purported to give what was in effect a decision: "This is not yours but mine" That is what the States feel; that the Government is in so many of these cases under the existing procedure put in the false position, unfair to the Government itself, of being judge in its own case where it itself is a party.

Colonel Peel: Could the State of Bhor have raised the question before the Privy Council?

Sir Leslie Scott: No, the Privy Council has no jurisdiction.

Colonel Peel: There is no means of taking it up?

Sir Leslie Scott: None at all That was decided in the case of *Hemchand v. Sakalal*, in the 8th volume of the Bombay Law Reporter, a case which went from Kathiawar to the Privy Council It was held that the Courts of Kathiawar, where there is a political court where cases brought by one State against the other are tried, are not Courts. The Privy Council said: These are not Courts of Justice from which an appeal lies to the King in Council, they are merely political institutions There is no Court at all in existence to which any State can resort for establishing its right in this sort of case. There is no machinery. That is one of the really big complaints the States have against the existing system. You will appreciate, Sirs, that that complaint is rendered doubly serious by the fact that till recently the States have been kept in isolation If all the States can act together, put forward joint representations and argue things out on the basis of their true rights, then of course, the evil is less than when each State is in isolated weakness, as it was before the War But even to-day obviously, I venture to submit, some judicial machinery of the kind is vitally necessary in order not only to do justice, but to give the impression of justice being done.

Chairman: The States do not, I suppose, wish to give up their own immunity from the action of the judicial tribunals?

Sir Leslie Scott: On the contrary, that is one of the questions for arrangement between them and the Crown. I think you are aware of the fact that that is a matter that has been under consideration very much, as to whether the States would not willingly delegate authority

to a Court, set up in accordance with their views by arrangement with the Government, under which litigation with the States in certain circumstances would be possible. It is a very important matter indeed.

Chairman: Yes, I see the point.

Sir Leslie Scott: Then the next one, Sir, is Cutch (page 338). You remember that Bhuj is the capital of the State of Cutch. After the abandonment of Bhuj as a British Cantonment, the Government proposed to establish Police lines and for that purpose the Durbar granted some lands. I think I can put this case very shortly to you Perhaps you would allow me to try and summarise the case even more shortly than it is in the memorandum.

Chairman: Certainly.

Sir Leslie Scott: If the Committee will just listen to this short summary. After the abandonment the Durbar granted some land to the Government for Agency Police lines in 1912 The land was granted for the purpose of Police lines only, free of rent and taxes, on terms that it should not be resumed by the State while it was required for that purpose; that it should not be used for any other purpose; that it should not cease to be the property of the Durbar In 1916 the Political Agent wrote (26th June, 1916—no reference quoted) that, although nothing had been arranged about jurisdiction, he understood that, as the Police were British subjects, the jurisdiction over the lines should rest with the Political Agent In reply the Maharao Sahib wrote (31st August, 1916—no reference quoted) that when the original arrangement was made four years before, Colonel Abud, who negotiated for the Government, had told him that if any policeman committed an offence either within or outside the lines he would be handed over to the Durbar for trial, and that this had been done when some of the Agency Police committed a mail robbery. Also that cases of breach of discipline or departmental offences only would be dealt with by the Agency Police Authorities (That was in accordance with the oral arrangement with Colonel Abud) The Agent replied (6th October, 1917 —no reference quoted) that the Government of India requested a formal cession of jurisdiction over the Police lines, and that jurisdiction over the Agency Police was reserved to the Agency Courts The Durbar replied (9th May, 1918—no reference quoted) that it would not cede jurisdiction or assent to any restriction on its jurisdiction, and referred to Article 10 of the Treaty of 1819, which provided that the Civil and Criminal jurisdiction of the British Government should not be introduced into Cutch territory. The Agent replied (25th July, 1919—no reference quoted) that, by the law of British India (Section 188 of the Criminal Procedure Code) all servants of the King are amenable to British India jurisdiction for offences committed in the territory of a State That reply, Sir, was quite irrelevant It was the old confusion, the idea of many people, that because British subjects anywhere in the world still have certain obligations to the British Crown, therefore the British Crown can go into a foreign country and exercise jurisdiction therein over them The Government, he said, was willing that State Courts should have jurisdiction for offences committed on leave and when absent from duty, but that in such cases a report should be made to the Political Agent before and after trial. Later a Naik of the Agency Police was arrested and tried and convicted in a State

Court for an offence in the Bhuj Bazar. The Political Agent (11th August, 1922—no reference quoted) asked the Maharao to use his prerogative by quashing the sentence of eight days imprisonment made, so that the man should not lose his job and pension. The Maharao did so and the Agent (12th August, 1922—no reference quoted) thanked him very warmly, but later the Political Agent (No. 959, dated 12th August, 1922) asked for a report on the case and when he had got it he reproved the Maharao severely for exercising jurisdiction without first informing him. The Political Agent asked for an assurance that it should not happen again (Confidential 31, dated 1st September, 1922). That is the whole of that case, stated quite shortly, and my submission *is that the* Maharao was right, but, if it had not been the Maharao, many other States, I think, would have submitted You see, there is the cession of jurisdiction and it is the old erroneous notion so prevalent, as it seems to me—I am speaking merely as Counsel for the moment—in Government circles *in India that the fact of the British* being allowed to have Agency Lines or Residencies or Cantonments or what not within a city, of itself means a transfer of jurisdiction; and I venture to submit quite shortly that that notion is erroneous. Sir, do not think that I am, as a lawyer, criticising officers who are not lawyers for not knowing the law. I am not; I think it is very natural, but I think that these questions of extra-territorial jurisdiction are very difficult Even Professor Holdsworth probably does not regard them as wholly simple. The fact remains, it is a very natural false impression to arrive at, but it is very prevalent and it prejudices the State very much

Then there is another Cutch case, Sir (page 346) *That, again,* I can take very shortly, if you will allow me May I just summarise that in a few sentences in the same way? -

Chairman: Certainly.

Sir Leslie Scott: In 1895 the Durbar Police were, at the request of the Political Agent, investigating a case of theft committed in the Agency compound. (That is the compound of the Agency itself) One of the suspects who was in the employ of the Agency and who had been arrested by the police died It was alleged that he died as the result of torture inflicted by the police in order to extort a confession, and it was alleged that the torture had taken place in the Agency compound Both the Political Agent and the Durbar claimed the right to try the accused police. The Political Agent began to try them. Finally, the Government (Letter No. 1002, dated 3rd August, 1895, from the Political Agent to the Dewan of Cutch) affirmed the claim to jurisdiction of the Political Agent within the limits *of the* Residency but ordered that, in that particular case, the trial should be conducted by the Durbar, because the Political Agent had invited the Durbar to send its own police in the first place. The Agency compound is admittedly *State territory, and the accused were admittedly* Durbar servants.

That is that case, Sir, and you see there a claim put forward for jurisdiction which had never been ceded. That is the point of law that I make: *There had never been a cession of jurisdiction* and therefore the Crown had not got the jurisdiction, and the Government of India gets out of the difficulty by saying, "All right, we will not insist upon this occasion "—a method of extrication from a legal labyrinth which

I have noticed on more occasions than one. That is a good illustration for our purpose.

The next one, Sir, is the Indore Residency case. That is rather a lengthy case (page 383) In 1818, after the Treaty of Mandsaur (Aitchison, Vol. IV, page 200), which provided for a Resident, as accredited Minister from the British Government in Indore, the State assigned about 400 acres of land for the use of the Resident and his staff. By 1921, that is to say, after a century, the area had very greatly increased, and there were in the Residency area 3,602 houses and 12,226 people. It had increased, it is a great town, at least, it is a considerable town And the Standing Committee for the Princes submit that it ought never to have been allowed to grow like that, and that the growing of the town in that way is due to a series of encroachments on the State against the will of the State

It was assigned, for the use of himself and his staff, by the Indore State. Needless to say, the State could have no jurisdiction over the person of this accredited Minister or over the persons of his staff, but at the same time jurisdiction over his land, allotted for a specified purpose, or over other people than the Minister and his staff was never ceded by the State The Government of India even to-day do not claim to have acquired this The land is admitted by the Government to be a part of the Indore State, set aside for a distinct object and nothing more In course of time, however, the original object of the assignment of this land was lost sight of and the Residency authorities have permitted the land to be used for a variety of purposes A large number of persons in no way required for Residency purposes have been allowed to build houses on these lands or on additional lands demanded for the extension of the Residency limits; institutions have sprung up which have occupied large areas, a big centre of trade has come into existence, the Residency is levying various taxes (e g, trade tax, property tax, and octroi), has been appropriating the excise income, and exercising civil and criminal jurisdiction over persons within the limits though they are in no way connected with Agency staff None of the above facts is in dispute. By pronouncements, which will be quoted later, the Government of India have admitted the Residency area to be an integral part of the Indore State, but, it is submitted, that they do not in practice give effect to these pronouncements. As stated above, the original grant in 1818 was a little over 400 acres (801 Bighas 4¾ Biswas to be accurate) By 1867 this had grown to 1468 Bighas, 10¾ Biswas (734 acres, that is the equivalent of the Indian measure). It is not proposed to go into ancient history and to deal with each or any of these accretions, but in 1867 (28th August, 1867—no reference quoted) the Residency asked for additional land and the Agent to the Governor-Genral, as the Minister was now called, gave an assurance that no more land in the future would be asked for from the State Whether this was a wise promise or not is immaterial as the Maharaja at the time declined to give any further land (No 224, dated 7th April, 1868). His successor to the State who came to the gadi in 1886, gave from an area known as "Rani's Garden," 13½ Bighas for a site for the Christian Hospital and Christian College. This was not the whole of the Garden, as a plot called the "Senior Rani's Garden" (32½ Bighas in extent) was not included in the grant Owing to alleged serious mal-

administration Maharaja Shivaji Rao Holkar was forced to accept in 1899 a Resident in direct political charge of the State and to consult him in all important matters. In January, 1903, he resigned the gadi in favour of his son, a minor. As a consequence, from 1900 to 1911 the administration of the State was controlled by the British Government and the Residency area grew in extent, as the Residency Authorities liked. Before, however, demanding any extension of area, the Residency authorities in 1901 refused (Letter No. 3964, dated 15th August, 1901) a request by the State for a site for a house in Residency limits for a European Settlement Officer employed by the State on the ground that no land within Residency limits would be given to anyone unconnected with the Residency. Note that, Sir; that is the ground of their refusal. In this connection it may be queried if all the 9,195 persons then living in this area were connected with the Residency, and why, if the Residency Authorities were so scrupulous in the observance of their obligation not to grant any land to persons unconnected with the Residency, they had not acted by it in the past nor were to act by it in the future. The Residency limits are within the heart of the State In 1903 the Residency proposed the establishment of a belt 200 yards wide and free of buildings round the Residency area For some years the Residency Authorities had been anxious to interfere with the full use by the State of lands adjacent to the Residency boundaries, e g , in 1887 on such a plot of land, regained by the State from the Railway as it was no longer required for *bona fide* Railway purposes, it was announced that "the Agent to the Governor-General would much prefer the land remaining unoccupied, or if occupied, being only used for a handsome and appropriate Serai." Again, in 1902, the Central India Agency had desired that the State should use its "influence to have things improved" These improvements were connected with certain buildings and a side drain abutting on the road leading from the King Edward Hospital to the Railway Station which the Indore City Municipality was accordingly instructed to repair. But in 1903 the request of the Residency authorities was far larger. They demanded that for Police purposes small groups of huts should not be allowed to remain near the Residency, even though outside Residency limits, and that the inmates should be forced to go to inside, either in the City or in the Residency area The plague appearing simultaneously, the Police measure was converted into a sanitary one The Resident in his D O Letter No. 4751, dated the 10th August, 1903, referring to a conversation with the then Indore Minister, asked that "no buildings should be allowed within a 200 yards' zone round the Residency Bazaars." Then the Resident further observed "There is nothing so bad as this on the western side of the Bazaars, and there all that is asked is that further building within a 200 yards' zone should be prohibited except with the express permission of the Durbar, which would only be granted in special cases in consultation with the Resident You will remember also that we sketched an arrangement whereby the Residency authorities would control Municipal matters in these two enclaves, namely, the piece of land from the Charitable Hospital to the Railway fence and the triangular block facing the Municipal park, without their being actually included in the Residency Bazaars. The Honourable

Mr. Bayley, to whom I submitted the proposal, is of opinion that it would be sufficient for the present if the Durbar would engage to allow the officer in charge of the Residency Bazaars to intimate in writing the measures that he might consider necessary to the Vakil, who would arrange that the Durbar Police and the Municipal and other authorities concerned should carry out such orders, and should promptly deal with any offenders. In pursuance of this arrangement the officer in charge of the Residency Bazaars would periodically inspect the localities in company with the Vakil and Municipal Officer, and would indicate on the spot anything that might be required It has been suggested also, that these useful measures might, with great advantage, be supplemented by orders for the demarcation of the village sites of adjoining villages, such as Gawaltoli, and for the restriction of their inhabitants to persons *bona fide* engaged in the tillage of the village lands and in the grazing of cattle " Sir, you see you get a vast extension of restrictions spreading out all round the Residency area. "In view of the immense importance of proper sanitation at this time of plague, I hope to receive your acceptance of these proposals at a very early date " In his letter No 2597, dated 11th August, 1903, the Minister agreed *in toto* to these proposals without, however, obtaining the sanction of the Council of Regency to this important measure which aimed at reducing practically to nothing the rights of the State over considerable immovable property In March, 1904, the existence of buildings in the vicinity of the road running past the King Edward Hospital to the Railway Station was felt by the Central India Agency to be objectionable, and they prevailed upon the State to get these buildings removed, save and except only two which were of a substantial nature. The site thus cleared was selected by the State for a Plague Hospital for the City. The Central India Agency now came forward with a proposal that " in recognition of the advantages which the Residency Bazaars will reap from the scheme the Bazaar funds will contribute half the compensation to be paid subject to the following conditions " They proposed a series of conditions as regards buildings, etc , over the whole of this area of the State which would tie it up for good The Council of Regency presided over by the Resident approved these arrangements in their Resolution No 130 dated the 10th March, 1904, and it was at this stage that the Council mentioned, and gave recognition to, the arrangement of the neutral zone in the following words:—

> " With the removal of the existing houses except the two that are to remain, the rules regulating the 200 yards' zone round the Residency Bazaars will apply for the site "

The result of these measures was —(1) The clearance of all buildings except the two from the site abutting the road from the King Edward Hospital to the railway station, and the location on the site of two hospitals with the necessary quarters for servants, etc (2) The restriction of the habitation in Big Gawaltoli and other villages near the Residency area to *bona fide* cultivators or Gaolis (cow-herds), etc (3) The qualified control of the Residency authorities over the triangular plot occupied by Dewan Saheb Palshikar, etc , and (4) The prohibition of further building on the site to the west of th Residency.

In 1907 a demand was made on the State for land in the 200 yards' zone for the Barwani and Rajgarh houses. The demand was based on the explicit ground that as the plots were within the 200 yards' zone the State could not build on them. So that you get the Residency, first [illegible] to keep a zone open for the sake of [illegible] lication is made by the Residency [illegible] be allowed to build, because you cannot" and the minority administration consented. In the same year, at the instance of the Resident, the Council of Regency granted 1893-4 bighas for the New Daly College That is nearly 950 acres In 1908 an unofficial attempt was made by the Resident at the instance of the Agent to the Governor General to bring about the removal of a whole hamlet called "Piplia." It was outside the 200 yards' zone, but the Indore Minister wrote to the Amin of Indore that the small huts of Piplia must be presenting a bad appearance to the Europeans who go out for a drive in that quarter. He suggested that the huts be removed to the outside of the village, and also gave general instructions that the Amin should see that small huts were not built in other villages on the other side of the Residency. About this time the removal of the old village of Chitawad was also pressed by the Central India Agency on the ground that it was upstream and dirty. The Council agreed to its removal About a third of the compensation for this removal was met by the Central India Agency. The Council had to shoulder the other two-thirds. In 1910 the Central India Agency approached the Indore State for lands for the Malwa Bhil Corps Lines, and the Water Works Pumping Station In their Resolution No. 431, dated June 16th, 1910, the Council granted about 160 acres upon various conditions, including (1) That the site should be used only for the lines required by the Corps. (2) No private buildings should be erected nor accommodation provided for persons unconnected with the Corps. (3) No market or general commercial undertakings of any kind should be carried on within the area (4) Should the land be at any time no longer needed for the specific use of the Corps, it should revert at once to the Durbar. (5) Jurisdiction on this area should be with the Political Authorities so long as the land was occupied by them. So that there you have the Minority Administration, under the control of the Government, handing over the jurisdiction which has never been handed over. The State also consented to grant an area of over eight acres for the Indore Residency Water Works Pumping Station. This lengthy description of the extension of the Residency area has been given to exemplify the fact that during the administration of the State by a Council working under the direct control of the Resident from 1900 to 1911, the interests of the State were not duly safeguarded when it was a matter of those interests clashing with the real or supposed interests of the Central India Agency in the matter of the land it occupied or wished to occupy.

I wonder whether the Committee would mind adjourning now. We come to a new part of this case; it is a little earlier than usual.

Chairman: Very well, we will adjourn. I saw a statement in the *Times* this morning which was certainly not authorised by the Committee, as to the procedure which was to be followed and the adjournments that were to be made. I do not know whether that was based

on information received from you or not, but if, as stated, you wished to have three more days for presenting these volumes and then adjourn for ten days, I should like to have notice as soon as possible.

Sir Leslie Scott: I have not seen the statement; I do not know anything about it. I did not give any information and will make inquiries It is wholly unauthorised

Professor Holdsworth. A statement too good to be true, the one I saw.

Sir Leslie Scott: That is what I was thinking

Chairman: Then we will adjourn till Thursday.

Minutes of the Evidence given before the Indian States Committee at Montagu House, Whitehall, S.W.1.

Thursday, 25th October, 1928, at 3.30 p.m.

PRESENT

Sir HARCOURT BUTLER, G C S I, G C I E, *Chairman*
Colonel The Honourable SIDNEY C PEEL, D S O
Professor W. S. HOLDSWORTH, K C

Their Highnesses the NAWAB OF BHOPAL and the MAHARAJA of NAWANAGAR.

The Right Honourable Sir LESLIE SCOTT, K C, M P, appeared on behalf of the Standing Committee of the Chamber of Princes.

Sir Leslie Scott: I was dealing with the Indore case and you will remember that the part I dealt with was the extensions of area of the Indore Residency which began with a limited extent and progressed till it reached a very large area indeed

In 1872 Sir T. Madhav Rao was appointed Minister of the State, a gentleman of great knowledge and character, and he took up the question of the extension of the Residency area and of the extension of the claims in respect of it. It is important to remember that the Resident at Indore was appointed under the Treaty of Mandsaur of 1818, and was purely a diplomatic representative Article XIV of the Treaty provided, "In order to maintain and improve the relations of amity and peace hereby established, it is agreed that an accredited Minister from the British Government shall reside with the Maharajah Mulhar Raw Holkar, and that the latter shall be at liberty to send a Vakil to the Most Noble the Governor-General" and as such, of course, he would have certain amenities and jurisdiction over his own Agency people Sir Madhav Rao found that the ground was being extended and many people other than the Agency people were being allowed to live there, further the immunity from Indore taxation which was originally, of course intended as a diplomatic immunity

of the Residency and its staff had been gradually extended to all the people living in the area and, further, that the Resident was claiming Civil and Criminal jurisdiction over all people living within the area. Consequently he wrote the letter to the A.G.G., Central India, which you will find on page 396 (No. 540 dated 3rd July, 1874), which raises the whole question. I am going to ask you to read that letter; I hope I shall not have to ask you to read many of the documents right through. "I have the honour to address you in view to suggest for your favourable consideration the necessity or desirableness of the utmost stringency being used in preventing the multiplication of houses and Bazaars in the tract usually known as the Indore Residency. 2. This subject came up in the course of conversation with the late Officiating Agent, Governor-General, Colonel Watson, and that gentleman informed me that as a rule applications for grants of building sites in the Residency limits are refused, and the applicants directed to obtain sites without those limits This is exactly what I aim at. It appears to me very desirable to place the rule on record to ensure its being steadily kept in view and adhered to. 3 So far as I am able to judge, it appears that when a British Representative or Minister was first allowed to take up residence at Indore in connection with the Court of His Highness Maharaja Holkar, a clear area, about two miles distant from the city, was allotted for his Residence and also for that of his suite The Residency was erected and bungalows for the Agent's assistants followed. 4. As, in the course of time, the staff of the Agent increased, houses increased in number. 5 Even the menial servants of the Agent and his staff and the Agent's personal escort could and did find places within the Residency limits. 6 According to international usage, the Agent claimed and obtained exemption from His Highness' taxes in the shape of duties for supplies intended for the use of his household, of his staff and of the escort 7 So far, this appears all right It is in conformity with general practice in the Native States of Travancore and Cochin, with which I am intimately acquainted 8 But the area originally allotted here for such purposes has been gradually allowed to be occupied by natives from our limits, such people being unconnected with the Agent and his suite. And the special immunity from taxes, originally meant to be limited to the Agent and his staff, has been gradually extended to all such people. Such development beyond legitimate intentions has been pressed forward so much, that the Agency is even practically disposed to claim the right of civil and criminal jurisdiction over such people, whereas such right can be claimed only over the Agent's staff, servants and such like 9. The consequence of this extraordinary advance has been a source of much difficulty and embarrassment to us In point of fact, His Highness' capital is within two miles distance of it, threatened with a rival likely to become formidable, unless timely measures be taken. 10. I leave it to your own judgment to conceive the grave and manifold inconveniences which must be inevitably entailed on us if the British Government should undertake to found and stimulate a town of its own in the very neighbourhood of our capital and in the very heart of our territories, and to claim for such town different laws, a different fiscal arrangement, and, in short, quite a different system of management altogether. 11. If I were called upon to give a hypothetical case merely to enable an English-

man to realise the difficulties and perplexities entailed on us, I would offer the picture of the German Ambassador in London demarcating a certain area around his residence, inviting lots of the London population to settle around, and claiming within such area the right of administering German Laws and the German system in general, and claiming for the whole settlement, supplies totally exempt from the taxes of England. A town in such circumstances would, of course, grow with wonderful rapidity. 12. I doubt very much if it can be seriously the intention of a protecting and friendly Power like the Government of India that such a town should be founded and stimulated so close to our very capital and so much in conflict with, and so very detrimental to the requirements of our daily administration. There cannot possibly be any object in multiplying indefinitely the points of collision between the interests of the paramount and protected States. 13. I hope, therefore, I may fairly suggest for your just and favourable consideration the steady and firm endorsement of the course indicated in paragraph 2 of this representation 14 There can, of course, be no objection whatever to the multiplication, in the Residency limits, of the houses of European officers of the British Government or of the British Railway, British Telegraph, etc., of European British subjects in general over whom the Agent may legitimately exercise the right of civil and criminal jurisdiction What I respectfully deprecate is the allowing the Native houses and Native population to occupy more ground" You observe the phrase of Sir Madhav Rao "to a right to exercise jurisdiction over European British subjects in general." In my submission, there is no such right and his saying that there was one would not confer it. "Unless restraining measures be stringently adopted, the Residency area will, I fear, ere long become more crowded, its sanitary condition become impaired, and these results might be made the ground for asking us to cede further space, a cession which I am sure would be intensely painful to His Highness if His Highness could ever be induced to agree to it" I should say that in fact though not quite in that form his prophesy turned out to be correct and sanitary questions became the reason for asking numerous facilities in the future "In reference to some of my propositions above stated, I can refer to International Law. For instance, Wheaton, in speaking of exemption from local jurisdiction, says, 'This immunity extends, not only to the person of the Minister but to his family and suite, Secretaries of Legation and other Secretaries, his servants, movable effects and the house in which he resides' Further, the same eminent Jurist says, 'The person and personal effects of the Minister are not liable to taxation He is exempt from the payment of duties on the importation of articles for his own personal use and that of his family' 17 It must be in reference to these acknowledged general principles that the Government of India has heretofore abstained from recognising the state of things in the Indore Residency limits In these limits either the Agent himself or one of his assistants exercises civil and criminal jurisdiction. So far as this jurisdiction concerns the servants, etc., of the Agent and European British subjects residing within the limits, it is in conformity with the acknowledged usage But it has been stretched to the unconnected Native inhabitants also. Colonel Sir Richard Meade, your predecessor in office, expressly states that such

exercise of jurisdiction has not been legally recognised, no competent sanction having ever been accorded by the Government of India . . ." I submit, Sir, that that is a very reasonable letter indeed stating in very plain forcible language the kind of drawback necessarily involved in that sort of extension.

No reply was received from the Residency to the points raised in the aforesaid communication, but a letter (No 541, dated 6th July, 1874) sent soon after elicited a reply (No. 1065, dated 13th July, 1874) from them that building sites in the Residency were given only under the authority of the Agent to the Governor-General, that they were resumable whenever required, and that no transfer of such sites could be made without the permission of the Agent to the Governor-General Of course, a very, very inadequate answer to that strong representation It may be pointed out here that the Agent to the Governor-General was unwilling to resume any site, though asked to do so in letter No. 583, dated the 26th July, 1921, and that the site rent is, as a matter of fact, charged in the Residency Area which is not paid to the Indore Government The contrast is there drawn between the statement of the Resident at the time that sites were resumable whenever required, and a request in 1921 to deal with the matter, and a definite refusal to resume; showing how these claims tend of themselves to grow

Sir T. Madhav Rao left for Baroda soon after as Dewan and the points above mentioned, which he had raised, were not pursued as he had wished. In 1878 the Central India Agency desired to obtain from the State for Railway purposes a piece of land on the Residency side of the Railway Station, and another on the northern side of the Station. I am sorry there is no plan here · it is very difficult to find this without a plan, but a good deal of importance, you will see, attaches to this application for land on the side of the Railway Station between the Station and the Residency A good deal of discussion took place over a Customs *Naka* (post) which the State wanted to put up, and in the course of the discussion an assurance was received from the Agent to the Governor-General that his object "has always been to restrict Mhow"—that is the Cantonment area—"and Residency inhabitants to local wants in trade." That is to prevent a trade centre growing up there. The State wanted that Customs *Naka* for the purpose only of exacting its due customs duties and export duties on goods which were imported into the State where bulk was broken, sale transactions took place, and subsequently the goods were either consumed in the State or were exported by the purchasers I want your particular attention to the difference between either customs duties or export duties on the one hand and transit duties on the other, because the discussion that follows largely deals with confusion in the minds of the representatives of the Crown between these two things. Transit duties, as you remember, were duties charged according to the old practice in India on goods passing through a territory, coming in at one side and going out at the other. The endeavour of the Government of India was to get the transit duties abolished in all States and in the end they succeeded. It is obvious that transit duties interfere with commerce by creating barriers and extra trouble. The State of Indore gave up transit duties on certain roads. No question of exaction of transit duties arises at any stage in connection with the Indore

Residency. It is partly Customs duties but in the main export duties, duties charged on the export from the State of produce taken from the State which may have been brought in from outside, but which has been purchased in the State and then sent out again—after bulk has been broken, very likely, but anyhow after there has been a transaction in the State. Transit duties have got nothing to do with that type of transaction. The Customs *Naka* was wanted in order that goods brought in might not be taken out by railway without paying the proper export duty. It appears that all the land required by the Agent to the Governor-General for Railway purposes was given over by May, 1878. That is between the Railway and the Residency Area Soon after, that is on the 26th of June, 1878, His Highness addressed a letter (Exhibit VII) to the Agent to the Governor-General in which, referring to a settlement come to between them at a personal interview, he requested him to issue a public notice that the passage (*sic*) through the land given for the railway purposes would not be used for any purposes other than that of carrying goods to the Indore Residency for *bona fide* consumption, and that any defaulting merchants or other persons would be handed over to the State for being punished under its Customs laws There is one sentence that I must read in Exhibit VI (page 399) This is a letter (dated 4th February, 1878) from the Resident addressed to the State in connection with the Toll House, and you will observe in the second paragraph the objection is based upon the contention that it was transit dues that were in question, and it was not transit dues; if it had been transit dues of the kind which the Maharaja had agreed to abolish, I venture to suggest that the language used by the Government would have been very different from the argumentative, persuasive language employed in this correspondence There would have been a short, sharp order "You are breaking your contract, you are not allowed to do it, and you are not going to be allowed to do it." Paragraph 6· "It would have been optional with the Government to place a station at the Indore Residency before the line reached the City"—that is to say, on bringing the railway into Indore—"and I may mention that this course was suggested in order to anticipate any difficulties, such as are now under discussion Sir Henry Daly overruled the suggestion believing that the interests of Indore would be better served by the plan now carried out, and having full faith in the steadfastness of the freedom of traffic established By placing the little Toll House at the Residency side of the Station this stability is gone Sir Henry Daly saw bundles opened and examined and carts unladen. It may be said that the Pandit in charge of the Toll House in doing this exceeded his authority, but if he has authority to sit there these mistakes will become chronic, and the Agent to the Governor-General feels that the Government of India after paying a high price for the freedom of the road, will hold him responsible that this is not infringed by the levy of transit dues It is impossible that the location of this Customs house should be permitted" These are the three important lines "The Imperial Government does not desire to interfere with the levy His Highness may impose on traffic passing in and out of his City But this"—meaning the Customs House at this point—"is to tax and cramp British subjects residing within limits under British control" Now, that is the real point of the objection that is made, and that is the point that is, in my submission, entirely

untenable I want the Committee to appreciate the difference because it is one of real principle, and the principle, in my submission, is ceded by what the Government say. Assuming for the moment that it is a case of charging export duties only—goods are brought from outside the City of Indore, they are there sold, purchasers deal with them as they like and then export them. That is traffic passing in and out of the City within the meaning of this sentence where the Resident says "The Imperial Government does not desire to interfere with the levy His Highness may impose" on that type of traffic. If it had been transit duties, they would have objected, because His Highness had agreed to abolish transit duties, and the fact that they admit that he is entitled to do it in respect of traffic passing in and out of the City is conclusive that the tax he was imposing was not a transit duty but something which he was entitled to impose, and the only distinction they make here is, not between the kind of traffic and not between the kind of duty, but simply and solely between the traffic going into the City and traffic going into the Residency. In my submission, that is no distinction of principle whatever. In paragraph 7 there are certain threats used in order to make the State conform to the wish of the Residency. Again, had it been a question of breach of an agreement about transit duties, this is not the language that would have been used: "It would be easy to run a loop line to the Residency, but this, Sir Henry Daly trusts, may not be necessary. The result of an annoying tax on goods passing to and from the rail at Indore would be to swell Mhow into a large city. The object of the Agent to the Governor-General has always been to restrict Mhow and Residency inhabitants to local wants in trade. . . . . Sir Henry Daly has striven to obtain an act of grace for His Highness in the consideration of the Khandesh boundary; it would be painful to him, while this representation is fresh with Government should he be compelled to signify that he has failed to prevail on His Highness to abstain from levying transit dues in the manner now initiated" Now, I feel convinced that had they been transit duties, the language would have been very different.

In 1879 it was noticed that grain coming to Indore from places outside was taken by traders to the Adda (cart stand) of Nawala Barda in the Indore Residency, and after being sold there—you notice that—was exported to other places by rail, and that similar grain imported to Indore from other places by rail was sold by traders within the railway compound. These transactions caused a loss to the State of its import and export duties. That is not transit duties at all; it is on goods going out after they have been purchased inside the State, and it is in respect of goods coming in subject to Customs duties. The matter was represented to the Residency by the Durbar Vakil in Kaifiyat, No. 83, dated the 25th February, 1880, and he requested that the grain dealers should be warned not to carry on such transactions either in the Residency or Railway limits, since these areas were not intended for purposes of trade to the detriment of the Customs Revenue of the State. In reply a Kaifiyat, No 370, dated the 19th March, 1880, was received which gave assurance that the person in charge of the Nawala Barda Adda—that is, in the Residency—had been given a warning to meet the wishes of the State. Those two Kaifiyats are exhibits VIII and IX respectively (pages 400 and 401) I need

not read the first one because it is accurately stated in what I have just said to you, but I want you to look at No. IX (page 401) This is from the Indore Residency: "In reference to your Kaifiyat No. 88, dated 25th February, 1880, representing that grain dealers in the Indore city take their carts of grain to the Adda (cart-stand) of Nowla Birda in the Indore Cantonment"—that is Indore Residency—"and thence to the Railway Station, where merchants buy and sell their grain for the purpose of exportation and thus evade the Durbar's import and export duties, and requesting that they be warned not to carry on such transactions either within the Residency limits or those of the railway station, I beg to inform you that orders have been issued to Nowla Birda according to the wishes of the Durbar" So that there they are conceding it quite clearly, after pressure, in the case of grain.

The next letter is Exhibit No. XI on that page, which is earlier in date than No X. I read it next. This is from the Vakil to the A.G.G (No 437, dated 8th November, 1880) · "I am in receipt of your letter dated the 15th September, 1880, received in reply to my letter of the 12th idem., regarding the stoppage of carts containing salt, the stoppage of export and the publication of a notice in the Indore Residency that any one found disobeying the orders about stoppage of export will be punished"—That is the stoppage of export of grain and other things referred to in the letter I have just read "Your letter asks for a list of articles on which duty is levied so that the Residency Magistrate will act thereupon and prevent loss of Sayar dues to the State."—Now, Sayar Dues are Customs dues, not transit dues —"This list has, however, been already sent to you with my letter No 369 of the 21st September, 1880 A communication has been received from the General Department of the State, together with a report from the Muntazim Sayar"—that is the man at the head of the Customs Department—"saying that it has been settled lately that goods exported from the Indore Residency shall be taken to Rampur"—this is the City limits—"and that such goods should leave only after such Duty is paid This procedure was in force till the 27th October, 1880 On that day 21 carts, containing salt and sugar, belonging to Dhanji Jiyaran Bania of the Indore Residency, were on their way to Goona and other places without paying the State duties, and it was reported that some other goods were also to be exported similarly Intimation of this was given to the Indore Residency Kotwali, but the Kotwal said that no duty would be levied on goods passing over the trunk roads, or by rail, and that the export of foodstuffs alone was prohibited The General Department requested that communication may be made to the Indore Residency to prevent the loss of Sayar duties"—that is Cutoms—"to the State I therefore request that necessary orders may be issued and the Durbar may be informed" So that, apparently, there was a general order in force for five months, from March to September, and, then, for some reason, based on no conceivable principle, it was decided to limit the assistance rendered to the State in the clearing of its Customs duties to food articles only and salt and sugar, which I should have thought were also food articles, were excluded. The answer is Exhibit No 10 (No 1481, dated 14th November, 1880) "In reference to your Kaifiat No 437, dated the 8th November, 1880, on the report of the Muntazim of Indore Sayar,

that 21 carts of sugar and salt belonging to one Dhanji Jitaram of the Indore Residency Bazaar, left for Goona without paying the Durbar's duties thereon, and in reference to the Residency Kotwal's reply to the Vakil that traffic passing over main roads and the railway is not subject to the Durbar's taxes, but that there is a prohibition for exportation of grain, I am to inform you that there is a prohibition placed on the exportation of grain from the Indore Cantonment which has not already paid the Durbar's taxes, but that this does not apply to salt, sugar, etc, imported by rail here and exported later on by trunk roads" There is no earthly reason, so far as I can see, why there should be any distinction between the two. The principle having been admitted of the right of the State to collect those Customs duties, I submit it ought to be allowed to do so in regard to all articles, and the refusal to permit it was a denial of State sovereignty within its own territory The grant of land in 1878 for railway purposes in the manner aforesaid gave opportunity to merchants to take goods from the railway station to the Residency area and to store them there for purposes of export. Naturally, the State saw in this a danger to its Customs revenues, and it addressed to the Central India Agency a letter, No. 469, dated 20th July, 1881, in which, to safeguard its interests, it suggested two alternatives: (1) that the level crossing gate on the side of the Residency should be closed in order that all goods coming by rail should go first to the City side to be charged with State Customs duties there before their export; (2) that, if this course should not be agreed to by the Residency Authorities, lists should be made of the articles required for the *bonâ fide* consumption of the people of the Residency, in order that these articles might be allowed by the Indore State to pass duty free to the Indore Residency None of these alternatives were accepted, and discussions went on till 1882, when Sir Lepel Griffin put down his views They are given in a long memorandum (dated 27th September, 1882) extending to nearly six pages of this small print I do not want to read the whole of it, but I will summarise it, and you will see whether I am correct in my summary of it The whole argument in it is based upon a confusion between Customs and Export Duties on the one hand, and Transit Duties on the other, assuming really that these were the Transit Duties, and therefore, that these goods ought to go free. My submission is that it really has nothing to do with the case at all The document itself is open to criticism as being inconsistent with itself, having admitted many times over that in fact these were Customs Duties; but I do not think it is fruitful, having regard to the fact that we want to limit ourselves to general principles, to discuss the particular letter in that kind of detail But I do want to call your attention to one or two sentences in it. The Durbar have submitted (page 402) a very carefully reasoned but short memorandum (No. 469, dated 20th July, 1881, to the First Assistant to the A.G G) I think I ought to ask your attention to one or two passages in that, (Exhibit 12). In the middle of the third paragraph, they draw attention to the fact that when the original arrangement was made for the building of the railway, a settlement was arrived at between the Durbar and the British Government, which distinctly lays down that no traffic should be allowed within the railway limits—that is no trade should be allowed within the railway limits. Then

paragraph 4: "To prevent this course I have the honour to suggest that the level crossing within the railway limit should be shut up, and all goods that come by railway should be ordered to be removed to the city side, whence the merchants can export them to any part of the country after paying the usual export duties . . . ." Would you look at the next paragraph but one, the third sentence. "While writing on this subject I beg to state that Captain Barr had ordered that there should take place no exports whatever unless the merchants paid the usual Durbar duties But General Daly cancelled the order, thus causing loss to the Durbar, which can be roughly estimated at Rs.36,000 per annum." Then the final paragraph is: "I beg, therefore, that you will be good enough to induce the Agent Governor-General to take the matter into his consideration and to restore to us such little piece of land as will serve to keep the limits of the Residency and the railway apart from each other." Then the Agent to the Governor-General reports thus, in paragraph 2 of his memorandum dated 27th September, 1882 "During the year that has passed since the receipt of this communication"—that is the one I have just read—"I have not considered it necessary or desirable to take up the case seeing that it had been decided finally, authoritatively, and with the acquiescence, although not with the consent of the Indore Durbar, in 1878, in a manner and for reasons with which I was and remain in complete accord" The Durbar's humble prayer for what it conceived to be its plain rights had been decided by the Government against it, the party concerned, without any reference to any independent inquiry I venture humbly to submit that the Durbar was absolutely right, and the Government was absolutely wrong But the Agent to the Governor-General says it is not necessary or desirable to take up the case I am not complaining of his conduct He knew, as he says, that there had been a final authoritative decision It may be that it was his duty to act in that way But I do very respectfully submit that the system is wrong where a matter of this kind, which is obviously one which ought to be decided impartially, is decided arbitrarily by a decision of the Government in its own interest, where the financial interests of the State are sacrificed in order to promote the financial interests of British India I venture to submit, it is plain that it is a system that cannot last, and that there must be some change You will observe the fallacy of the whole letter begins in paragraph 5 "As a preliminary to discussion, I limited its range as far as possible by defining the exact grievance of which complaint was made" Then he defines it—I am not going to pause on it—in terms that are so ludicrously wrong and unconnected with the facts of the case that, of course, his conclusions were vitiated by his original start He defines the grievances by omitting the fundamental fact that the Durbar had raised the whole question not in relation to goods coming straight through the State but in relation to goods sold in the State and exported thence by their purchasers. In relation to the transit duties there is no difficulty at all. The system is familiar to Sir Harcourt Butler A *Parwana* is given to the importer at the State boundary, if he says that the goods are going right through the State, and he produces a *Parwana* on the goods leaving the State to show that they are entitled to leave without

payment of duty, and they go through and there is an end of it. There is an admission of fact here in this letter about the piece of railway land which was taken from the State (paragraph 15). The Durbar asked for a strip or gap "In his first Assistant's letter of the 26th April, 1878, he pointed out that the question simply was that the railway authorities required the land in question for railway purposes, and that such purposes could not be obtained if the strip or gap required by the Durbar were to be allowed. He again pointed out that the Customs Post which they had established in such a position was in opposition to the arrangement by which trade had been freed on the trunk roads"—this is the old transit duty point—"and that the Durbar had levied dues on goods which had previously passed free. Sir Henry Daly accordingly declined to allow the gap and insisted on the whole of the land required being conceded, and informed the Durbar that unless the land were made over by the 1st April he would solicit the orders of the Government of India on the subject, and suggest the immediate laying of rails from the railway station to within the Residency limits, where, had the Government of India so chosen, the site of the railway station might have been originally fixed. The land, on this, was surrendered by the Durbar and included within the railway limits which now join those of the Residency, and through traffic can pass from the free grand trunk roads to the railway station without paying toll at any Indore Customs House." I venture to submit that was a plain case of the State submitting to a threat of force If the Government says "We are going to lay rails" the State knows quite well it is within the power of the Government to do it. It is for that reason that it is so fundamentally vital for the sake of the great principle of liberty to get a system by which these questions can be properly adjusted by an independent investigation. I do not propose to read the rest of the letter because it is all based on that fallacy that it was transit duties and not Customs and Export duties.

Early in 1883, in reply to correspondence received from the Central India Agency in connection with the detention in custody of one Motilal, the State informed the Central India Agency, in letter No 243, dated 9th February, 1883, that a man by going over to reside in the Indore Residency could not change his status of being an Indore subject, and that the Indore Residency should not be called British territory, as it was intended only for the residence of the accredited British Minister at the Court of His Highness Maharaja Holkar The status of the Residency as a place merely for the residence of the British Minister was in the same year explicitly explained to the Central India Agency by Bakhshi Kumansingh in his letter No 719, dated 29th June, 1883, in which, while mentioning that one Guljee Jagannath's opium was detained for non-payment of State duty, he says: "I need hardly repeat here what has been frequently urged by the Durbar in the course of its correspondence with your office that the Indore Residency was established for the accommodation of the representative of the British Government . . . . ," and nothing more.

Now we get a question arising about the manufacture of opium in the Indore Residency (page 388). The question of the manufacture of opium in the Indore Residency, and its export therefrom, also

formed the subject of correspondence about this time. In letter No. 825, dated the 4th August, 1883, to the Central India Agency, the State maintained that it had the right to charge with customs duties all opium brought into the Residency whether from Indore territory or from other States It was pointed out that the State had its opium office in the Residency up to 1858, that the Customs duty was levied by the State on all opium weighed there; and that the office was removed by the State of its own accord. The Central India Agency was also reminded that the Indore Residency and Mhow Cantonment were portions of the State territories, and a reference was made in that connection to the case of His Highness the Maharaja Holkar through his Agent, Madhov Rao Morchwar, plaintiff appellant, versus Adaji Dada, defendant respondent—in which there had been a decision —in which it was laid down by the Agent to the Governor-General that the Mhow Cantonment was not British territory These arguments had their desired effect. The Central India Agency required Gulji Jagannath, the person concerned, to stop the manufacture of opium in the Residency and to satisfy the demand of the Indore Government for duty on all opium so manufactured and whether brought from the State territory or other States (Central India Agency letter No. 6440, dated the 21st May, 1894) About this time a letter, No. 1550, dated the 29th May, 1844, was received from the Central India Agency intimating, with reference to the States previous representation (No 825, dated the 4th August, 1883), that the Government of India could not allow a tax to be levied by the Indore State on opium not grown in the State territory, and which having arrived by railway or by the Agra-Bombay Road, was taken to the Residency scales for the sole purpose of being weighed prior to its export This decision took no account of the argument then advanced that other States had been levying duties on opium sent to the weighing scales situated in their territories Of course, I am not going into the question of fact as to whether bulk would be broken or not, so as to make it an importation into the State If it were mere transit there would be nothing in it As it is, what the Government of India laid down in effect was (1) that the Indore State could not levy on foreign opium brought by railway or the Bombay Agra Road into the Residency for the sole purpose of weighment at the Residency scales, and that (2) this pronouncement had not reference to the opium brought for manufacture or storage in the Indore Residency. They do not object if it is merely for weighing Accordingly in a case which arose three years later, the Central India Agency gave orders that no opium could be manufactured in the Residency for export to other places (letter of the Deputy Opium Agent to Shivlal Motilal, dated the 11th February, 1887) But as regards the storage the Central India Agency at a later stage whittled down the State right to some extent by expressing their inability to enforce the prohibition of storage in all cases, since they considered it impracticable to do so That is an illustration of what must obviously be the natural result, if the State officials, the State customs officers and Police are not allowed in an area, obviously the State law cannot properly be enforced in that area; difficulties are bound to arise.

Here one has to go back for a moment in order to get the thread clear Before proceeding to the next stage a reference must be

here to the correspondence of 1869, which shows that the British authorities themselves felt then that they could not, without the sanction of the Holkar State, validly exercise jurisdiction in the Cantonment of Mhow. The position of Mhow, it need hardly be said, is akin to that of the Indore Residency as far as jurisdiction is concerned. In its letter dated the 20th February, 1869, the Central India Agency wrote to the State Vakil:—(1) That cases relating to immovable property were arising in the Cantonment. (2) That the Courts there had only minor and summary powers and could not entertain the cases in question, and (3) That, therefore, it was hoped that His Highness would agree to have the Cantonment Magistrate (at Mhow) invested with the powers of a Civil Judge to take up and decide such cases. The reply of the Vakil is contained in his Kaifiat, No. 172, dated the 25th March, 1869. He informed the Resident (Agent to the Governor-General) that His Highness had consented to the establishment of a Court in the Camp at Mhow, subject to the following conditions: (1) That the camp would always remain as part of the Indore State's territory. (2) That when laws were made or altered there information of the same should be given to the State. (3) That when the Plaintiff lived in the Khalsa territory—that is outside the cantonment—and the Defendant lived in the Camp, the suit should be instituted in the Camp through the State Vakil, who should also be informed of the final decision. (4) That when the Plaintiff desired to appeal he should not go to any High Court but should appeal to the Agency at Indore. (5) That if the Plaintiff was residing in the Camp and the Defendant in the Khalsa territories, the former should institute a suit in the State Civil Courts and that final decision would rest with the State. I call attention to that the very reasonable attitude of the State in meeting the views of the cantonment authorities as far as possible. It may be noted that a few years later, in disregard of these stipulations, laws were introduced and Courts were established in the Cantonment of Mhow, by notification under the Foreign Jurisdiction Act, without care having been taken to follow the conditions aforesaid A similar procedure was adopted in the Indore Residency, and this was particularly unfortunate since the Indore State had not only given no permission for the exercise of jurisdiction there over the people unconnected with the Residency, but had expressly protested against the exercise of such jurisdiction. The question of the State's jurisdiction over the Residency area came up again for consideration in the year 1897. In his letter No 300, dated the 24th April, 1897, the Minister reminded the Central India Agency that the Indore Residency was a part of the Indore territory, and asked that the State should be "permitted to exercise control over the trade of the Residency Bazaar and bring it under its custom's tariff." He pointed out that in spite of the assurance given by the Central India Agency, from time to time, that "the Residency Bazaar would be restricted to local wants in trade" the merchants there were carrying on an amount of export trade which did not pay duty to the State, though it had a right to tax consumption so far as the people of the Residency, unconnected w[illegible] concerned. The [illegible] No 4658, dated [illegible] are quoted as most important: "Under certain limitations and subject to

certain provisions as to method of control, the Agent to the Governor General, is prepared to admit that as the Residency limits form an integral part of the territory of His Highness the Maharaja Holkar, the Durbar has a right to levy from a person living in the Residency limits, not being a British subject, the same taxes as are taken from other persons living in other parts of Indore territory. It may be conceded that Banias and other dealers purchase and bring into the Residency Bazaar grain and other articles of commerce in excess of local requirements and that these articles change hands in the Residency Bazaar and that profits accrue to the dealers who buy and sell these articles. It is with regard to the legitimate tax on these trade transactions that the Agent to the Governor-General is prepared to admit the claim of the Indore Durbar But on the other hand if the Durbar claims the right to levy a tax on trade transactions in the Residency Bazaars, it is presumed the expenses usually covered by the collection of such octroi and municipal taxes would be borne by the Durbar . . . . If the Durbar desires to levy a tax on trade, Colonel Barr is prepared to admit the claim provided that the proceeds of the duty are fairly apportioned to the maintenance of Municipal expenses of the Bazaar But the Agent to the Governor-General is quite prepared to consider proposals which would secure the collection by the Residency authorities of an import and export duty on all articles of trade which are imported into the Residency limits for purposes of trade, and are exported after breaking bulk and changing hands in Residency limits, provided (1) that the Durbar contributed from the tax so collected such a sum as may be agreed upon towards Municipal expenditure in the Residency Bazaar, (2) that the tariff of charges is the same as is imposed on goods sold for export in the City of Indore, (3) that no restriction or prohibition, beyond the levy of this tax, is placed on the export of grain or other commodities from the Indore Residency Bazaar to any part of India "

I will pause there for a moment You will observe there that in that letter the Residency authorities are expressly conceding the contention of the State at the time and saying the precise opposite to what Sir Lepel Griffin said in his Memorandum, that we were entitled to those import and export taxes wherever bulk was broken in the course of trade; that was all the State had ever been asking for It shows how easy it is for injustice to be done to a State when that long memorandum of Sir Lepel Griffin could be written, the whole of it, on an entirely false basis which is subsequently given away by some officer of Government who presumably had not had that in mind, or was fair minded and realised that the matter must be dealt with on principles and did his best to do it. There are certain stipulations and conditions attached to this concession here which, in my submission, they were not entitled to attach, but that is a minor point They illustrate only the difficulties that arise out of these cases of exterritorial habits—I will not say "jurisdiction" but "habits" of the British Government in the States

There is one point I do want to refer to there, Sir In the first passage of that quotation you see that it is conceded that the Durbar has a right to levy taxes "except upon British subjects" Now, Sir, very respectfully, that is an exception which has no justification, if

you exclude, of course, the Resident and the persons entitled to diplomatic immunity. In the treaties with Indore there are express clauses providing that the State will not employ English or Americans without the sanction of the Governor-General, but there is no cession of jurisdiction to the Government over British subjects or European and American subjects, although in some treaties—I think, if I remember rightly, the case of Savantvadi is one—that jurisdiction is expressly ceded, and the fact that you get it ceded in one or two treaties shows, I venture to submit, quite clearly that it is not a matter that can be inferred or implied. In the absence of an express cession of jurisdiction over Europeans my submission is that each of these full-powered States has an absolute right to exercise all civil and criminal jurisdiction over any European, any Englishman present in the State. That is a matter of law upon which I make that submission as we come to it in the reading of this evidence.

Besides claiming immunity from taxation for the Agent to the Governor-General and his staff, which the Indore State was prepared to allow on the ground of international usage, if not on the ground of the Treaty of Mandsore as the Agent to the Governor-General asserted, the Central India Agency claimed such exemption for all Government officers and troops whether connected or not with the Residency; and they also claimed such immunity for the rest of the Residency population in respect of their articles of consumption. The reply of the Central India Agency contains no explanation as to why the Residency Bazaar was being allowed to carry on trade beyond local wants. Even the qualified recognition of the State's right was whittled down when the time came for the application of the procedure laid down by themselves at the end of their letter They now questioned, as would appear from what follows, the right of the State to tax the trade in commodities imported into the Residency Bazaar from Foreign States for the purpose of export. This, they said, was as large as 80 to 85 per cent. of the total trade, forgetting that in doing so they were admitting that the Residency had become a large centre of trade. They argued that the system of octroi would not do for the collection of the State's dues, and that there was no other system which could be considered as suitable for the purpose. In other words, they say: the method you want to adopt for collecting them is very inconvenient to us, and we will not allow any other.

They reaffirmed in the end their various propositions which conceded to a considerable extent what the State asked (1) That the Durbar have the right to levy any dues they please on produce grown in Indore territory and imported into the Residency Bazaar, and (2) that the Durbar have a right to profit by the large trade which is carried on in the Residency Bazaar. Those, of course, are perfectly sound admissions. Then they go on to say they could not offer for the acceptance of the State any solution better than that contained in the following passages: "Regarding the second point mentioned above, viz., the right of the Durbar to profit by the trade carried on in the Residency Bazaar, I am to say that in consideration of the primary difficulties attending the collection of any import or export duties (as explained above) and in order not to deprive the Durbar of its just dues, the Agent to the Governor-General would be willing to sanction an increase of the present tax on trade transactions (Beyai)

in force in the Residency Bazaar from 2 annas to 4 annas per cent., and would agree that only one-third of the collections should be retained by the Residency for the maintenance of the Bazaar, two-thirds being handed over to the State. From this source, in an ordinary year, it is calculated that the Durbar would directly benefit by an increase in revenue of from 15,000 to 20,000 per annum, with no corresponding evils such as must result from an increase of taxation on imports or exports To give some idea of the basis on which such a revenue would stand, it may be mentioned that for the year 1893-94 the export from the Residency Bazaar in the two articles, wheat and linseed only, amounted to 731,112 maunds." So that shows, on two articles alone, the extent of the trade "I am to add that if the Durbar accept the suggestions now made for the Indore Residency Bazaar, the Agent to the Governor-General is prepared to recommend to the Government of India an extension of the same rules to the Cantonment of Mhow; but it must be clearly understood that the basis of negotiations must be a distinct promise on the part of the Durbar to remove all *Nakas* from all roads leading to Mhow and Indore Residency, and the freedom of produce of other States from all taxation except that which may be agreed upon as leviable upon trade transactions." Now, Sir, there are two broad criticisms upon that letter The first is, that if, according to the law of the State, there was a tax upon goods exported from the State, and that applied in the City of Indore and in other parts of the State territory to goods exported, whether they were grown in the State or whether they had come from outside—assuming that in the case of the State the tax was applicable in that way regardless of the original source of origin of the goods, and that that was conceded by the Residency in regard to goods exported from the City of Indore as we saw in the previous letter it was—what justification had the Residency for saying, in respect of goods exported from the Residency, "you shall not tax any goods except those that have been grown inside the State?"

We are not concerned here with questions of policy as to whether the method of taxation was a good one or a bad one, or whether it might be improved, we are concerned with a question of sovereign rights. My respectful submission is the Residency had no right to deny to the State the exercise of its sovereign right to tax within the Residency the export of goods on exactly the same footing as it taxed them when exported from the City of Indore That is the first point The second point is that they are saying to the State although this is State territory, although you have Customs officers and officials *and although you have Police, although you have your ordinary method* of collecting your taxes in your territories, you shall not adopt those methods here As a concession, an act of courtesy and grace, instead of allowing you to do it we will do some collecting for you, but we will not collect your tax, we will collect another tax which we have invented for ourselves in the Residency called the Beyai tax, and we will double the rate of it; and out of that we will give you a certain amount My submission is that they were not entitled to do either of these two things

Then the answer (No 771 dated 30th October, 1897). The Indore Government were sick to death of getting nothing, so to speak,

rather than go on they accepted the offer and made an agreement. The Indore Government accepted the inadequate one offered as above, and proposed an agreement for the levy of the said taxation in the Indore Residency and Mhow Cantonment. The proposed agreement left it to the Residency to control and direct the collection of the tax, but provided that the State's customs officials might periodically inspect or take copies of books, registers, etc., and make suggestions about any practical detail of the system. It also provided that the cost of collection, such as establishment charges, etc , should be incurred within the grant to be fixed by mutual consent. The Central India Agency refused to bind themselves to these provisions and maintained that the State would have no right to interfere in the administration and collection of the tax or even to act as auditors of this account. The Central India Agency refused also to stipulate that the State would receive Rs.15,000 per annum as minimum income from the tax, or to agree that the rate of taxation would be raised proportionately if the income fell short of it, although it appears that in the course of conversation between the Agent to the Governor-General and Mr. Barnes (Assistant to the Agent to the Governor-General) on the one side, and Rao Bahadur R. J. Bhide, then State Vakil, on the other, both these stipulations had been verbally agreed to on the 2nd October, 1897. As a result of further discussion the Central India Agency merely agreed that the State might "at any time offer any suggestions or bring to notice any matters regarding the practical working of the scheme" and that although for one year the rate of ¼ per cent., "shall not be subject to alteration, at the end of that period the scheme shall be liable to revision, and the Durbar shall be at liberty to make any proposals regarding it which they may think fit." A magnanimous offer! If you do not like it, you may make some proposals to us. We do not undertake to consider them, but you may make them. Then the State, of course, did not like that, but they realised that there was no alternative and so they accepted the proposals (letter No 229, dated 29th March, 1898), as expressed by the Agency, with the result that the State is now entitled to receive two-thirds of the nett profits arising from the Beyai tax chargeable at ¼ per cent. on trade transaction of the value of Rs 25 and above in the Indore Residency and Mhow Cantonment; and to a similar share from the nett receipts of the Gari Adda tax levied in both of these places. In consideration of this share the State has bound itself to levy no duty or dues of its own on goods going from Foreign States to the two places. Whether any goods going from the said two places to Foreign States should be similarly exempted is not made clear in the draft of the final agreement received from the Central India Agency. The clause of the agreement in favour of the State that the rate of taxation might be considered after one year so as to raise the income of the State to what was anticipated was apparently either lost sight of or was at least not pressed by the State Council, which had been got up to administer the State affairs by February, 1900, when the case was ripe for the consideration of that clause. You see there was a year allowed for the working of it, and by the end of that year the Maharaja had been deprived of his powers, for maladministration. There was an Administration put in which continued from early 1900 to the year 1911, and from then on, you will bear in mind, the State was under the

Administration of the Government of India. However, the point was not lost sight of altogether by the Government of India, as in the Residency letter No. 5459, dated 3rd December, 1900, there is the following passage: "I am desired by the Honourable the Agent to the Governor-General"—this is the important thing, the practical application—"to inform you that, although the collections during 1898-99 fell short of the amount anticipated when the imposition of the tax was first proposed, the Government of India have sanctioned the continuance of the Beyai scheme until there has been an opportunity of testing its working in normal years." Up to the year 1900, when the State was placed under a Council of Administration, as has been mentioned above, there had been no cession of jurisdiction by the State over lands in the Residency area. The Central India Agency recognised, too, that the area they occupied was an integral part of the State's territory, and that the State had the right to levy the same taxes there from people who were not British subjects as those levied in other parts of the Indore State. In practical application, however, the Central India Agency permitted the exercise of this right only over the trade transactions in the Residency area, provided the collection of this revenue was made by the Residency authorities, and the State allowed free imports of goods from other States to the Residency The Council presided over by the Resident, which, as stated above, had surrendered additional land to the Residency, regardless of the interests of the State, were now to start surrendering jurisdiction In 1907, jurisdiction over the land for the Barwani and Rajgarh houses was demanded by the Central India Agency. The Council gave in. Encouraged by their success, in the same year the Agency secured jurisdiction over the land given for the Daly College. In 1910 jurisdiction was secured over the lands given to the Malwa Bhil Corps and the Water Works Pumping Station So matters went on until in 1911 the Maharaja assumed his powers The demands for such jurisdiction by the Central India Agency during a minority administration were wholly unjustifiable and it is certain that, if the Resident had not been in control of the administration, such jurisdictional rights would not have been yielded by the State

Now, Sir, we are nearly at the end of this long case There are one or two points, and then we are nearly finished In 1907—that is still during the Minority Administration, yes, it was Minority from 1903 to 1911, from 1900 to 1903 the Maharaja was still alive though not in charge—in 1907 there was a proposal to introduce the Madras system for the collection of Abkari revenue and there were frequent consultations between the Central India Agency and the State with a view to the introduction of a scheme in that behalf In a note dated the 25th February, 1907, which he handed over to Mr Cox, Excise Commissioner for Central India, the Minister, Rai Bahadur Nanak Chand, emphasised *inter alia* (1) that the Residency Bazaar was not meant as a source of revenue to the British Government, but only as a place for the residence of the British Army, the Central India Agency staff, and persons connected therewith; (2) that Sir Lepel Griffin, as Agent to the Governor-General, had himself recognised that the Indore Residency Bazaar—he was dealing with the Cantonments also—could not be permitted to become a large commercial centre, and that new settlers could not be permitted to reside there, and (3) that the Excise revenue from the Indore Residency rightly belonged to the State and that this position followed upon

the principles accepted by Sir David Barr, Agent to the Governor-General in 1896, in connection with the Beyai question. Rai Bahadur Nanak Chand asked that the Excise revenue derived from the people in the Residency, who were not connected with the Residency, should be left to be enjoyed by the State. But the Excise Commissioner for Central India intimated that the question raised was a political one with which he was not competent to deal. No attempt was made to press the point on the Resident or the Agent to the Governor-General by the Minority Administration, with the result that in 1914 the Excise Commissioner for Central India proposed issuing a single notification for the sale of Excise contracts in the Indore Residency, Mhow Cantonment, and Manpur Pergana. Manpur Pergana is in British India, so that in one notification they treat two districts of the State of Indore, where they had certain privileges, as part and parcel of, or on the same footing with, British India, and they simply use the Excise contracts. The Chief Minister objected; his objection was effective, and the notification was modified in its terms; the Residency area was still admitted to be a part of the Indore State.

Then the next is a small point, but it illustrates a certain aspect. Certain prominent persons in the Indore State have received from the Durbar the privilege of driving with an escort. In 1916, the Residency authorities objected to this privilege being exercised within the Residency area, and the privilege was denied except to the Maharaja and his family.

The Rani's Garden: You will remember from last Tuesday, Sir, that in 1886, I think it was, some six or seven acres of the Rani's garden were ceded, or were handed over for the use of a Christian Hospital and Christian College, but the larger part of the garden, 32½ bighas, was retained. The 13½ bighas mentioned above had been in the possession of the Residency for about a decade when in 1896 the Central India Agency decided to set up a market in the portion of the garden not handed over to them. They had brought their material to the site when the State Vakil in a letter No. 496, dated July, 1886, pointed out that the garden was in the jurisdiction of the Palace Department, so far as the plot of 32½ bighas above-mentioned and known as the "Senior Rani's Garden" was concerned In reply, the Central India Agency inquired whether there was any order from them granting the garden to the "Senior Rani." The Residency Authorities eventually had to admit their error, which should never have occurred, as their limits are marked by boundary pillars. The market was not constructed, but later when there was an idea of building three bungalows on this ground by the State for the three daughters of the Maharaja, the Central India Agency raised difficulties and the idea had to be abandoned—In their own land!—Later, during the Council of Regency administration, when there was an idea of disposing of a State house in this portion of the garden, the State, at the instance of the Resident, had to seek permission from the Agent to the Governor-General for the sale and had to subscribe to certain conditions laid down by him. Such action was quite unjustifiable on the part of both the Resident and the Agent to the Governor-General.

The State opium was stored in a building in the Rani's garden in the portion not made over for inclusion in the Residency area. This,

however, did not preclude the Central India Agency from seizing the buildings on 4th June, 1921 Needless to say this illegal action on the part of the Central India Agency called forth an immediate protest from the State, which re-affirmed its right of jurisdiction not merely over the buildings in question, but over the Residency area generally. After about six months the building with the opium was restored to the State

What was intended merely as a place for the Residence of the British Representative and his staff has grown in 1921 into a town of 3,602 houses and 12,226 inhabitants. That is that case, Sir. I think the Committee will agree with me that it illustrates very clearly a number of important questions here. May I respectfully ask the Committee in considering these cases to consider the language of the letters with care, and see how very many minor points there are which are put forward in the official letters which, if they are looked at closely, are in my respectful submission not justifiable.

The next case, Sir, is one of Sawantwadi (page 541). It is a very small case, a very small point, I can take it very shortly, it is just a particular type of case and illustrates a principle. It is an illustration of a fact, which I know is known to Sir Harcourt Butler, that the States cling with affectionate devotion to their old rights and if they have possessed a right in the past and feel quite clearly that they have never given it up, that right is a very real thing to them at the present day Since 1858 it is perfectly clear that the Crown has recognised the fundamental obligation of the Paramount Power not to take any right and not to keep any right of a State which does not belong to Great Britain, and you will bear in mind, Sir—I know you will—in all these matters, my contention that the view taken by the Government and the Secretary of State in connection with Kathiawar represents truly the obligation of the Paramount Power. It is to preserve each State in that position of possession and power that it had when it came into relationship with the British Crown in the first instance, unless the State has subsequently consented to altering it. That is the fundamental principle

In this Sawantwadi case—of course, you, Sir Harcourt, know, I will remind Professor Holdsworth, if he does not remember, Sawantwadi is in the Bombay Presidency on the coast—and it was, I think, almost the earliest Treaty made, 1730, a Treaty made by the Bombay people with the State in order jointly to attack the pirates. There is no question that the State was a State of complete and absolute sovereignty. In the year 1812 a Treaty was made which you find in Aitchison, at page 304, of Volume VII, by which the Fort and Port of Vengurla was ceded to Great Britain. At the same time, or shortly after—a year after I think it was—the Rani who was in charge of the State at that time addressed an informal document to the inhabitants of the town or village which had not been ceded telling them to pay the State revenues to the British Authorities in respect of the whole of the village, except certain excepted portions. Subsequently, the British put forward two claims, (1) that the village was ceded with full sovereign rights and (2) that the portions that were excepted in that informal document addressed to the villagers were not retained in sovereignty but, by some process that I do not follow,

became mere private possessions of the Ruler of the State and consequently, subject to Income Tax, and the claim was made to make the Ruler pay Income Tax in respect of those excepted portions. The State of Sawantwadi says: We did not give up sovereignty in respect of any part of the village, even over the part the revenues of which we did assign. Had we been really intending to cede it, it would have been ceded by a formal document direct to the Company; there was no such document; all we did was to address the villagers. Whether we were right or whether we were wrong about that, it is perfectly clear from the document, that if it be regarded as a cession at all, these properties in question were plainly excepted, and if they were excepted they were necessarily excepted with all the rights of property and sovereignty attaching to them, and you cannot assume that, in regard to those particular parts which were expressly excepted, there was any intention to make any cession at all; therefore, you never got sovereignty; if you did not get sovereignty, then, obviously, you are not entitled to levy Income Tax because we are enjoying our sovereign rights and are, therefore, not liable to Income Tax upon these portions. That is the case, and I can put it shortly, if you will look with me at the broad points.

If you look at the Treaty, the language is that the fort with the port and proper limits thereof were ceded by the Treaty of 1812 and it is not disputed by the Government in the subsequent correspondence that the village was not ceded by that Treaty. It is agreed, it is common ground, it was not ceded by that Treaty. The words are "That the fort of Vengurla and the battery of Gunaramo Tembe, with the port and proper limits thereof"—that is the port and the limits of the port—"shall be ceded in full right and sovereignty to the Honourable Company." Now, will you look at the document affecting these particular properties; it is on page 546, Exhibit 4, "Order from Huzur to wit from the year 1213 (1813 A.D.) the above noted village (of) Bunder (Vengurla) except what appertains to—(Charitable endowments to temples)"—that is one description of land, and another description of land—"(Charitable endowments to Brahmins), Inams free of *Dust* or State dues, Sarkar's oarts, grain lands and salt pans and claimants of Hukadars with these deductions, all the rest of the village is given from the beginning of next year to the Honourable Company's Sarkar whose orders you must attend and obey and pay their dues" Now, it is quite clear that these named properties are wholly excepted. I can take it shortly. The claim was for Income Tax. In 1861, the State was asked to pay Income Tax on the profits from these reserved lands on the ground that they were British territory. The above facts were brought to the notice of the Bombay Government by the Political Superintendent in his letters No 514, dated 28th June, 1861, and No 740, dated 17th October, 1861, but the Bombay Government were pleased to refuse exemption from payment, and this decision was confirmed by the Secretary of State in his despatch No 11, of 1862, dated 30th April, 1862, which runs as follows:—

"It appears from the correspondence before me that though the sovereignty of the village of Vengurla was not in your opinion expressly ceded to the British Government by the Deed of Cession or

any other formal instrument, yet that in practice it has been vested in us since 1813, and that our right to it has never, during that period, been called into question This being so, I approve your Orders, ruling that the Waree Chief's Vengurla holdings are in British territory, and as such liable to income tax" From the above despatch of the Secretary of State it is clear that even the British Government did not reject the opinion of the Bombay Government that there had been no express cession of sovereignty by the Rokha or any other formal instrument, and merely inferred a cession from what it thought had been the practice But this inference is open to the criticism that if there had been any cession of sovereignty in fact it would certainly have been expressed in some formal agreement or treaty between the two parties As regards the village of Vengurla generally, the so-called deed of cession is a mere "Rokha" or order to the villagers regarding the payment of revenue But even if the "Rokha" be treated as a deed of cession, the reserved lands would remain an "enclave" of the Sawantwadi State But when the fact is that the revenues of the village were assigned by a specific Order to the villagers and not by a treaty or agreement, it is plain that the intention of the sovereign of Sawantwadi was not to make any cession of territory The presumption, therefore, is that both the village and the reserved lands remained part of the State for all purposes except the assignment of village revenues To prove that by "practice" as the Secretary of State puts it, there had been some subsequent cession could require extraordinarily clear evidence, and none such has ever been put forward by the Government If the lands in question are still part of the State, it follows that there can be no Income Tax liability to British India in respect of their profits This case illustrates the defects of the existing system of relationship inasmuch as no machinery then existed, or does now exist, to provide the States with an unfettered right of appealing to any impartial judicial tribunal or court of arbitration I do not think it is necessary for me to read the correspondence of 1861 in detail The view taken by the Superintendent on the spot was that the Chief of the State was right, and that they were sovereign lands and that there was no obligation to Income Tax It was overruled merely on that ground specified My submission is that that is a very good illustration of the kind of case that urgently calls for some kind of impartial judicial machinery for the investigation of an essentially justiciable issue It appears that there was an inaccurate translation of that "Rokha" in Mr. Thomas's Book of Treaties (page 664), a publication available to the Government of Bombay, and the Superintendent, Major Gordon, writing a letter (No. 740, dated 17th October, 1861, to the Acting Secretary, Government of Bombay), who evidently had seen the originals, says that it is inaccurately translated. That is that case, and I am not going to pause further on it.

Now the next case that I want to take is that of Udaipur (page 611); the claim of Udaipur to the Mewar Merwara area. That is a very good illustration of the appropriation to itself by the British Government of sovereignty in fact over an area, while conceding to the State the merely nominal sovereignty I expect that the facts of this case are more or less known to Sir Harcourt Butler. Before I state what the point is, I should just like to give a historical statement of facts: In 1818 the

district of Ajmer came into British possession as a result of exchange of territories with the Gwalior Durbar. Perhaps Mr. Bagram might bring the map round to you for a moment, because it is almost impossible to follow this without an eye on the map. I think I have it sufficiently in my mind to carry it, if you would keep it before you (Map handed to the Committee). The district is the green district in the very middle of the map as open to you. It is in the shape of a crescent rather with the horns towards the South. To the North you have Jodhpur, and to the South you have Udaipur. The pink area is Udaipur. For all practical purposes to-day, the whole of that area coloured green is treated as British territory. A part of it—I say half of it, but I do not know that that is a correct mathematical division—was Ajmer, which we are not concerned with for the moment. The other was Merwara, consisting of two portions: Mewar Merwara and Marwar Merwara, the latter coming from Jodhpur; the Mewar part is the Udaipur portion. It is a tract which, in the early part of the nineteenth century, was inhabited by lawless tribes. It was hilly in character, and, therefore, very difficult to pacify. In 1818, the district of Ajmer came into British possession, as a result of the exchange of territories with the Gwalior Durbar. That is the Ajmer part. On its occupation, the British Government tried to pacify the neighbouring tracts of Merwara, which was inhabited by predatory tribes. But the attempts having failed, it was decided to subjugate the country. "The Durbars of Udaipur and Jodhpur (between whom and the British Government the tract was held to be divided) promised to co-operate, and with their assistance the campaign was ended by January, 1821." That is a quotation from Aitchison, Volume III, page 406. The conquered tract was thereupon divided into three unequal portions, four Parganas going to the British Government, three to Udaipur and the remainder to Jodhpur, and the Agent of the Maharana then—to quote Aitchison—again "undertook the administration of the portion belonging to Mewar"—that is Udaipur—"appointed a Governor, raised a corps of matchlock men and commenced to collect revenue." But the British Government thought that the divided jurisdiction was proving an administrative difficulty, and, therefore, "decided that the three portions should be brought together under the management of one British officer, vested with full authority in Civil and Criminal matters, and that a battalion of eight companies of 70 men each should be enrolled among the Mers, to preserve order" (Aitchison, Vol. III, page 406) With this end in view, the British Government negotiated for the surrender of the Udaipur portion of the Merwara district consisting of 76 villages, and succeeded in 1823 in securing its management for a period of ten years, the Maharana agreeing to pay Rs.15,000 towards the cost of the local corps In the words of Aitchison (Vol. III, page 407) the Maharana "acquiesced, however, in the transfer of administration with reluctance" That phrase "securing its management" means that the British Government got the Maharana to enter into an agreement for ten years handing over the management to the British Government to manage the district on his behalf. There is no question about that—that it was on his behalf The agreement is in Aitchison, and I can refer to it. I had better do that now. Do you mind looking at Volume III of Aitchison, page 32. You get the terms there This was not the first agreement. The first

agreement was made in 1823 for ten years Then this agreement was made for another eight years, but we see Article I says: "The arrangements now in force for the management of the villages comprised in the Udaipur share of Mugra Merwara to continue for a further period of eight years as stated above" That is all I want. I just wanted you to see the phrase. That was Udaipur territory managed by agreement for a time by the Company. The agreement of 1823 expired in 1833. The Maharana had to agree to its continuance for a further period of eight years by an agreement concluded on the 7th March, 1833, by which the Durbar was saddled with a sum of Rs 5,000 a year for administrative expenditure in addition to Rs 15,000 which they paid towards the maintenance of the local corps That clause is actually in the agreement. The remark in Aitchison (page 407, Vol. III) on this point that "as the Maharana had profited largely by it, he readily agreed to its continuance for a further period of eight years" etc, is misleading as it is inconsistent with the attitude of the Durbar and the general trend of the correspondence on the subject.

I want now to take the exhibits here in chronological order, because it is the only way to follow them The first one begins with 1849 (page 613). The 1833 agreement ran till 1841, and this letter is eight years after its termination It is a Kharita (Exhibit I) from the Maharana to the Political Agent "I have received your Kharita dated 19th May, 1849, and noted the contents You have sent the accounts of the Bhil Corps and requested me to order the State officials to arrange the remittance of the balance of the accounts by one, two or three instalments I have already addressed you in this behalf and am again asking you kindly to have a book transfer of all the items relating to the revenues of Merwara villages and the expenses of Merwara-Bhil Corps to the expense of the Durbar here, and send an account up to Asadh Sud 15 Sambat 1905, shewing the balance, if any, payable by the Odeypore State The Durbar will arrange to pay up the amount due by them in three or four instalments In future the contribution payable by the Durbar in this behalf will be remitted from Odeypore, while the revenue of the Mewar Merwara villages held in trust by the Government due to the Durbar should be remitted to Odeypore in full"—You will notice that phrase "held in trust by the Government"—"The clerks of the State in attendance who remain in Beawar shall, as agreed upon before, keep detailed accounts."—That is in Merwara—"You will please write to Colonel Dixon"—he is the Superintendent—"about this, asking him to pay the Durbar contribution of the said Corps out of the revenue payable to the Durbar and let the clerks enter it into accounts, while arrangements for mutual remittances may in future be made as suggested above The first agreement entered into between the British Government and the Durbar in the time of General Ochterlony was for 10 years."—That was the 1823 agreement—"Then another agreement, which was a formal one, was made for eight years in the time of Colonel Locket in the year 1890"—that is 1833 A.D—"through Mehta Sher Singh. The Colonel expressed (the view) that if after the expiry of eight years the Durbar desired to renew it a similar agreement would be made with a limit of time After the lapse of eight years, through the negligence of the disloyal Mehta, who was then Minister of the State, no new agreement could be drawn up. The terms of the agreement

have now been drafted and sent to Mehta Sher Singhji"—that is another Mehta—"A copy of the same was sent to you through the Durbar Vakil in attendance on you. It is desirable that an agreement in accordance with the same be drawn up. You will please write to Colonel Low about the same, who will kindly get a new agreement drawn up as explained to him by Mehtaji." Then there is another letter from the Maharana in the same year to Colonel Low, A. G. G. (Exhibit 2): "The position of Odeypore State, being an important one, the expenditure thereof has to be kept on a reasonable scale. The portion of the State which is fertile has gone into others' possession, while the country which mostly contains hills and jungles forms the State territory ."—The other is the Company's possession.—"The latter yields little revenue, but has to be maintained at a large expense and it is then that the administration is controlled. This causes great trouble It is with the advice and consultation of the sagacious Political Agent like Colonel Thomas Robinson, that the loan payable to the Bankers and the arrears of tribute due to the Government was cleared off, and it was for him that the Government agreed to accept a reduced amount of tribute. The last item, although reduced to some extent, still exceeds the tribute paid by other sister States. The Political Agent will fully explain this to you. I hope you will take such steps in consultation with him as may tend towards the prosperity of the State and no such trouble may face the Durbar in future. This will simply bring credit on you in the public. As regards the agreement of Magra and Merwara, it was entered into between the British Government and the Odeypore Durbar for eight years in the time of Colonel I Locket, after which no other agreement was made." —You notice that definite statement "no other agreement was made." "There have been several items of loss in the revenue of the said villages which Mehta Sher Singh brought to your notice at Ajmere, when you said that it was an official matter and that you would arrange to have a new agreement completed and sent as requested by him This promised agreement which has not yet been received may kindly be drawn up and sent now. I have written in detail to Colonel Robinson, who will fully explain the circumstances to you I have deputed Rao Bakhat Singhji and Mehta Sher Singhji to you. I hope you will please arrange the needful being done as suggested by them. This State has been prosperous" &c.

Then in the following year, 1850, there is another Kharita (Exhibit 3) from His Highness to the Political Agent: "The agreement for Magra Merwara was made for 10 years in the time of General Ochterlony. Then again in the time of Colonel I. Locket another agreement was drawn up for 8 years. After the expiry of the term it was desired"—that is by the State—"to administer the said villages as Khalsa, i.e, under the direct management of the State. Colonel Thomas Robinson, however, advised to draw up a new agreement for the said period and also handed over a draft of the same But nothing practical came into effect. Mehta Sher Singh explained all the facts to Colonel J. Low, but he said that it was an official matter and that the agreement would therefore be sent through Political Agent after completion. Colonel Low, however, went to Abu and was then in camp for a long time, which delayed the matter. You will please move the

authorities now in this behalf and get the required agreement and favour me with letters of your welfare every now and then."

Then there is a little gap and in the next year, 1851, there is another letter (Exhibit 4) from His Highness to the Political Agent. "I have received your Kharita regarding Bhil Corps, and noted the contents. I personally spoke to you in the matter. In accordance with your views I have allowed Seth Zorawar Mall to pay Rs. one lac, which may kindly be credited to the accounts and a receipt sent to me therefor. There must be some arrears in accounts up to Asadh Sud 15 Sambat 1907, against which a sum of Rs 50,000 per annum will be remitted for credit so as to clear off the outstanding accounts. A sum of Rs. 50,000 is due on account of contribution of the Bhil Corps up to Savan Badi 1 Sambat 1908, which will be remitted through Seth Zorawar Mall by half-yearly instalments on the 30th of Adadh and Pos You will please send me a letter to the address of Colonel Dixon directing him to credit the whole of the Durbar dues on account of Mewar Merwara revenues into the State Treasury so that as decided by Colonel Locket in respect of the new agreement the sum of Rs 20,000 only may be deducted and the balance remitted as suggested above If money is required for Taccavi purposes or for the construction of tanks, he should write to me and act under my instructions As for future you will please have an agreement drawn up for a period of eight years as per draft given to Colonel John Low A copy of the same is also attached" I do not know what "Taccavi purposes" are

Chairman: Advances to cultivators.

Sir Leslie Scott: Thank you, I am much obliged. My comment upon those letters is that it is perfectly clear that the state of affairs continued to be that of the Company managing this Province as agent for and on behalf of the State, accounting to the State in respect of the revenues The draft agreement (Exhibit 4a) throws a good deal of light upon the position, I want to read it. It was never entered into, it was only a draft It is expressed to be "between Colonel John Low, Agent to the Governor-General, Rajputana, on behalf of the Honourable East India Company, and Mehta Sher Singh, on behalf of Odeypore Durbar, about retaining the contract of Mewar Merwara villages for a further period of 8 years." So that it is quite clear it was being treated simply as the farming of the villages "1 Under this agreement the management of the villages of Mewar Merwara will remain in the hands of the officials of the said East India Company for a period of eight years 2 The whole of the revenues of the villages in question, less a sum of Rs 20,000 (Chittore coin) on account of Bhil Corps contribution and other miscellaneous expenses payable to the Government, will be credited annually into the State Treasury for a period of eight years. 3 A list of villages, including the names of newly settled hamlets, may be handed over to the State clerks If any new hamlet is inhabited by the officials of the said Company in the interests of the Durbar or to the mutual advantage, an intimation thereof must be given to the State officials 4 All the expenditure relating to tanks, etc, should not, as before, be incurred without the sanction of the Durbar's Prime Minister, and even then a State clerk must be present with the staff of the

Company at the time of the construction of buildings, etc., and disbursement of wages to the labourers, so that the work done by the employees of the Company could be brought to the notice of the Durbar The figures of expenditure incurred up to date on the construction of tanks, etc., may be supplied to the State clerks. 5. State clerks should note down the revenue from the villages of Mewar Merwara, together with Taccavis distributed per head, side by side with the Company's clerks. 6. The statement of income and expenditure, with balance, relating to the villages in Mewar Merwara, should, as heretofore, be submitted to the Durbar Office at Odeypore, so as to show the income, expenditure and balance in hand every year. 7. The boundary survey of Ajmer and Mewar Merwara has been done and the settlement will now be a pucca one—copy of the settlement papers should be given to the State clerks. In future, all the information in respect of instalments fixed in Tehsils and Perganas, should be supplied to the State clerk so as to enable him to show the same in his books. 8. In case of abolition of the contract of a village or zamindari rights of any one, or remission or suspension of land revenue, the sanction of the Durbar's Prime Minister and inspection of papers by Durbar clerks will be necessary. All the orders and communications in such matters should be recorded by the State clerks."

So that it is clear there, Sir, I submit, as to what the position was, and that the State was insisting upon that position. Then one year later, 1852, there is another Kharita (Exhibit 5) from His Highness to the Political Agent: "The country known as Mewar Merwara was conquered in the year 1819 . . . . "—then he just summarises the history—" His Highness the Maharaja Jawan Singhji ordered that the term was over and that the Company's management should therefore be withdrawn. There was a good deal of discussion on the subject, and the territory was again entrusted for management to the East India Company for a term of eight years under an agreement sanctioned by His Excellency the Governor-General. After the lapse of the eight years' time through the negligence of the disloyal Mehta, who was then Minister-in-Charge of the State, no new agreement was drawn up The question of drawing up a new agreement has been pending since the appointment of Mehta Sher Singh as Prime Minister Colonel John Low admitted the question to be a *right one and* promised to have the agreement completed, but this has not been done and should be arranged now. I have sent a copy of the old Kharita and the agreement for your information. The sum of Rs. 20,000 on account of contribution towards local corps, etc., collection of revenues, may be deducted from the Durbar dues while the balance should be credited into the State Treasury. If any money is required to meet any demand, my Prime Minister should be addressed about the same. The accounts of the Company's clerks should tally with those of the State Clerk, who should always be furnished with the figures of expenditure "—Now this is the important part—" Should His Excellency the Governor-General, however, so desire, the villages in Mewar Merwara be retained in the possession of the Company "—that is that the villages in Mewar Merwara should be retained in the possession of the Company—" and in lieu of them allow the Durbar to have in farm" seven villages which are there mentioned. Those were Gwalior villages, and his offer was an alternative offer by a triangular exchange that he would give up Mewar Merwara if he was given these villages

which it would be very convenient for administrative purposes that he should have "From the revenues realised from these villages in Sambat, 1908 (1852 A.D.), necessary expenditure on the management may be deducted and the difference between the net amount and the Durbar dues on account of the Mewar Merwara be credited into the State Treasury. I shall arrange the payment of the Company's dues annually; formal agreement should be drawn up as it would lead to mutual interest because the villages named above are surrounded by Mewar, and disputes of boundary, dacoity, robbery and money transactions are abundant in them If they will be managed by the State all the troubles will be over. The Odeypore State has its officials who realise customs duties while the same duties are levied in those villages separately. The Durbar will not interfere with it but assist in the realization of duties. The balance sheet of the receipts and expenditure of Mewar Merwara for" the year 1852 " has been sent to you . . . " and so on.

Then nothing happens for 14 years, between 1852 and 1866 I will now read the Kharita from His Highness the Maharana Shambhu Singhji, the successor to the last one, to the Political Agent in 1866 (Exhibit 6) · " The agreement in respect of villages in Mewar Merwara was drawn up for a period of eight years, commencing from May, 1833, and ending May 1841, in the time of Colonel I Locket After the expiry of the term there was a proposal to keep that part of the country under the management of the State as Khalsa, but under the advice of Colonel Thomas Robinson, a new agreement for eight years was drafted This agreement, however, remained incomplete The former Prime Minister of Odeypore also spoke to Colonel John Low about it. The latter promised to send the agreement duly completed through the Political Agent, Mewar. Kharita was also written "—that is Exhibit 3—" As there was firm understanding with the East India Company, it was hoped that having regard to the decision arrived at the Mewar Merwara will be handed to the Mewar, but years have since elapsed and yet the matter has not been finally settled I am therefore writing to you that taking into consideration the above facts, you will take necessary steps to hand over to the Odeypore State the villages of Mewar Merwara which were given in trust to the East India Company long ago "

Now between those two dates, 1852 and 1866, the Mutiny had happened, the Queen's Proclamation of 1858 had been issued, and the adoption sanad of 1859 had been given to Udaipur My submission is that this letter shows that *the position in 1866 was still* what it was in 1852, that this district was held in trust for the State of Udaipur and that under the Proclamation and under the implied term of the Paramountcy Agreement, and indeed under the terms of the Treaty of 1818, Udaipur was in 1866 entitled absolutely to have this district returned In the Treaty of 1818, you will remember, as in all the other Rajputana treaties, or in most of them, there is an absolute recognition, an undertaking by the Government to observe the absolute sovereignty of Udaipur in his own country, and the British jurisdiction shall not be introduced It is Article 9 " The Maharana of Udaipur shall always be absolute ruler of his own country and the British jurisdiction shall not be introduced into that princi-

pality." That is on page 31 of Volume III of Aitchison. You are very familiar with the Article I know. Now I say that to retain that district under British jurisdiction after demand from the Maharana for handing it back was a direct breach of that Article of the Treaty of 1818, which is the law regulating the relations of the two to-day; and that nothing can ever happen, not only nothing has happened but nothing can ever happen, unless it be with the consent of His Highness of Udaipur to alter that position. Now, Sir, that is the point.

There is another thing In Aitchison's, if you will look at pages 408-9, Volume III, there is a little passage at the end; there is a little extra sort of addendum on the subject of the Ajmer Merawara which begins at page 405, and at the bottom of page 408 you will see a statement about the Bhil Corps: "The Merawara Battalion, now designated the 44th Merwara Infantry, remained loyal during the Mutiny of 1857, and received special privileges In 1870 it was reorganised into a purely Military Corps by Lord Mayo, and its Headquarters were transferred from Beawar to Ajmer." Now, the point of that reference is this, the Bhil Corps was raised at a time when the country was very disturbed and it was necessary to have troops to keep it pacified, on the undertaking of Udaipur to pay an annual sum for helping in the maintenance of that corps, which was a corps for the special purpose of pacifying his own district. The pacification of the district had been completed before the Mutiny; there was no further object that the Bhil Corps could serve, and therefore there could be no obligation of any possible kind, even in the absence of an agreement, for him to continue to pay any contribution to the Bhil Corps, and the Bhil Corps, as you will see there, were turned into an ordinary regiment of the Indian Army

Nothing came of the matter until 1872, that is, six years after that "Kharita" which I have just read, when the Durbar were informed that as a result of a "Revenue settlement sanctioned by His Excellency the Viceroy, there had occurred a reduction in the revenues of the Udaipur villages in Merwara to the extent of 24 thousand rupees." You see that little sentence there. His Highness of Udaipur was not asked about that revenue settlement, it was done without consulting him, and the reduction was made without consulting him, but the result of it, of course, was that his revenues suffered very much; he was still expected to go on making his contribution to the Bhil Corps and there was no money out of which to pay it. The result of it was the State got into debt on account of this Merwara Battalion, and a considerable debt was piled up, which subsequently is used by the Government for special measures taken as you will see The Durbar protested in 1872 (Letter to Political Agent—Exhibit 7): "I have received your letter dated 14th September, with which you have forwarded translation of a communication from the Officiating Commissioner, Ajmer Merwara, together with a copy of the communication from the Secretary, Government of India, on the subject of reduction in the revenues under the settlement of Merwara pending regular settlement of the territory as sanctioned by His Excellency the Viceroy. You have also forwarded therewith a statement showing a reduction amounting to Rs 24,136-7-9"

—this is from the officials, one of the Ministers of Udaipur—" In this connection I am to write to you that no intimation about the new settlement was given to me nor were my views invited in the matter. The letter shows that the question of a new settlement was sanctioned by His Excellency the Viceroy. I am sure that His Excellency might have found some advantages in doing so, but if the revenue of Mewar Merwara will be decreased by the said amount, which means a sheer loss of Rs 24,136-7-9, the reason for which is quite unknown, I am to request that you will please explain the matter as the separation of this Pergana from the supervision of the State Officials means a heavy loss to the Durbar, while the new assessment will tell heavily on the revenues from these villages. You are perhaps aware that the villages in the Mewar Merwara were placed under the management of the East India Company under an agreement for a term of ten years in the time of General Ochterlony, with the consent of the Durbar and the Company . . . " And he then relates the text which you have heard related several times over Then " Now I am again writing this to you with a view that the Mewar Merwara may be handed over back to the Odeypore State in accordance with the understanding between the East India Company and the Durbar The Odeypore State owes its prosperity to your person and it is hoped it will continue as up to now "

Then there is another interval of time The Government of India neither restored the villages nor concluded any agreement The whole policy of silence is best explained in words of the Government of India itself: " In 1872 to 1874 claims to a readjustment were put forward by Udaipur, but it was resolved not to change the existing arrangements." That is a quotation from page 12 of Aitchison, Vol III. Then owing to the reduction in revenues brought about by the settlement sanctioned without the Durbar's permission the Durbar were called upon to pay an arrear of Rs 76,000, on account of their contribution The Durbar considered it unfair and pressed their claim to be put in possession of the Mewar villages The British Government proposed, in reply—this is very important—" to accept in future the revenues of Mewar Merwara in full discharge of the Udaipur State's contributions towards the cost of the administration of that tract, the expenses of the Mewar Bhil corps, and of the Merwara Battalion." You will observe for a moment, Sir, that it is the discharge of the State's contributions towards the cost of administration, and to the Mewar Bhil Corps and the Merwara Battalion Perhaps I made a mistake just now, I thought the two were the same The Durbar demurred to these arrangements and suggested as an alternative plan that territorial exchanges should be arranged between the Maharaja Scindia and himself

If you just turn to Exhibit 8, this was in 1881, nine years later, it is the last letter, a Kharita from Maharana Sajjan Singh Ji of Udaipur, to the A G G, Rajputana " I have received letter dated 6th August, 1881, from the Resident of Mewar, with which he has forwarded translation of a letter from the Secretary, Foreign Department, Government of India, regarding Mewar Merwara, together

with accounts of the Bhil Corps. The letter purports that it is not advisable"—note the words, Sir, 'that it is not advisable'—" to argue or discuss the question of restoration of the villages in Mewar Merwara to the Odeypore Durbar, but that the Government of India have made a proposal for the settlement of accounts which is highly conducive in the interests of the State, and it is that the amount paid by the Durbar as contribution towards both the Regiments (Mewar Bheel Corps and Merwara Battalion), be credited direct into the State Treasury against the Mewar Merwara revenues payable to the Durbar by the Government; that in case of the said revenue being less than the contributions in question, the Government will not claim for the difference, while no accounts of the revenue collection of the said villages will be rendered" This is in effect, "say no more about it; leave the whole of this district in our possession for ever, then we will let you off your debt and we will not ask you for further contributions for a Bhil Corps, the original purpose of which has long ago ceased"—" (2) In this connection I am to say that as this State owes its prosperity to the help rendered to it by the British Government, who have always been anxious to look to the interests there, it is not considered necessary to argue or discuss the question of restoration of the said villages" He means he is relying upon the British Government to do the right thing.—" I am now writing this to you in the matters of Mewar Bhil Corps and Mewar Merwara, not with a view of arguing the same, because you are fully aware of the circumstances connected therewith I am simply to say that the agreement in respect of Mewar Merwara is quite separate from that of the Bhil Corps. It was merely on account of the State being under debts, not under any agreement, that the contribution on account of Bhil Corps was not remitted from here but was credited direct from the Treasury of the Mewar Merwara The contributions in question could not be fully paid by adjustment of the revenues from Mewar Merwara and a sum of Rs. 3,74,568 over and above that had to be paid up to date from the State Treasury here. A sum of about Rs 90,000 from the revenues of Mewar Merwara was spent on the construction and repairs of tanks under the impression that the Government would return these villages to the State. In spite of all this the Odeypore State has not the least objection to the payment of the Bhil Corps contribution. It may be noted that no contribution is paid on account of Merwara Battalion but whatever is paid to the Government on this account is merely to cover the expenditure incurred in revenue collections and pacification of the country. This expenditure has its direct connection with the revenues of the said villages and is, as agreed upon, deducted from the same. Under the circumstances the only contribution paid by the State is that of the Bhil Corps and the Durbar have no objection to make a direct payment thereof with a view to facilitate the accounts."—As a matter of fact there was no liability whatever upon them, I submit, for the Bhil Corps—" If there is any credit balance in favour of the Durbar after transactions, it may be remitted yearly to the State Treasury at Odeypore"—Now you get at the end the same alternative proposal—" In case it is desired not to part with the said territory owing to its close proximity with the British districts and Marwar State, then the other alternative for the Government is to kindly

transfer to the Gwalior State such of the British villages as are adjoining that State and in exchange thereof arrange to have such of the villages of that State as are adjoining the Odeypore State territory and transfer them to the latter. The situation of these villages will be known to you from the map. There is a great inconvenience . . ." I need not trouble about it. You will see what the proposal is. He will give up the territory in return for the Gwalior villages Then: "The Bhil Corps contribution, which is deducted from the revenue of Mewar Merwara amounts up to Rs. 50,000 only, while the net land revenue from the said District comes to about Rs. 72,424 per annum. If other miscellaneous receipts are added thereto it comes to about Rs. 77,000 per annum, while in some favourable years it has exceeded even that figure In Sambat year, 1872, when a pacca statement was made, it was reduced to Rs. 48,299/4/3, i e. a decrease of Rs 24,136/7/- was effected therein. Thus the total revenue from these villages now amounts to Rs 54,000 only. On receiving information about this settlement a letter was addressed to the Resident, Mewar, on Asauj Bud 11 Sambat 1929"— I am not sure whether it is the Sambat or the British year— "objecting to the same which might have thrown light into the matter. Understanding, however, that a reduction in the land revenue after the end of the settlement operations might bring some prosperity on the people and that it may be revised in the next settlement, the matter was not urged and no further reference was made, but now that the period of settlement is to come to an end, I hope the land revenues will, after that time, be increased. It is no wonder if the same reaches its former figure of Rs 77,000 per annum, or it may go still higher, i.e. over Rs 1,00,000 after some time You will please know that the district of Jahajpore is inhabited by Minas. In former times remittances had to be made from here in addition to the revenue therefrom, in order to meet the expenses of management of the same Now that there has been a marked improvement in the administration of that district, a revenue of about Rs 70,000 per annum is realised therefrom over and above the cost of management. This increase in revenue is due to the fact that the land remained as a part of the State, and it is expected that revenue from that district will go still higher Any separation of land from the State therefore causes a permanent loss to it and tells heavily on its revenue." You see what he is saying is, "I have got a district of Jahajpore. I have so improved it that the revenue has increased to Rs 70,000 and if you will let me have my own districts back they will improve in the same way" Then the last sentence: "I trust you will please obtain Government Orders on the subject by communicating to them all the facts of the case so as to remove the impression which I bear in my mind in this connection and always favour me with letters of your welfare."

That is the end of the matter of the exhibits, and I want just to read the two Kharitas (Aitchison, Vol. III, pages 33 and 34) which are not set out here, which follow on after that one. From His Excellency the Viceroy and Governor-General, dated 16th October, 1883: "I have had under long and careful consideration the 'Kharita' which Your Highness addressed on the 24th February, 1882, to my

Officiating Agent in Rajputana, with reference to the district of Meywar-Mairwarra. In the year 1881 a somewhat similar representation from Your Highness received my full attention."—That is the one that I have just read, Sir, (Exhibit 8),—" I then caused my Agent in Rajputana to communicate to Your Highness my opinion that the tenure on which the British Government administers the district of Meywar-Mairwarra was a matter involving questions of intricacy, and that a discussion about it did not appear to be expedient. At the same time I expressed my desire of removing, as far as possible, all difficulties connected with the adjustment of the accounts of the district. With this view I determined that the revenues of Meywar-Mairwarra should in future be accepted in full discharge of contributions due from the Oudeypore State towards the Meywar Bhil Corps, the Mairwarra Battalion, and the cost of the administration of the district itself. I further consented to forego a claim on Your Highness for arrears amounting to more than Rs. 76,000, on the understanding that in future the system of rendering accounts of the district to Your Highness should be discontinued as tending to give rise to unprofitable discussions about small matters.

Your Highness, while cordially recognising the liberal spirit in which this decison had been conceived, expressed an apprehension lest your rights of sovereignty over Meywar-Mairwarra should be impaired in the eyes of your subjects by a discontinuance of the former system of rendering accounts. Moreover, Your Highness anticipated, in view of a revision of the current revenue settlement of the district, that the new arrangements might not ultimately prove to be profitable to the Oudeypore State Your Highness therefore suggested as an alternative plan that territorial exchanges should be arranged between Your Highness and the Maharaja Sindia in order to transfer to you certain outlying villages which are now possessed by the Gwalior Durbar, and in consideration for which Your Highness would be prepared to cede Meywar-Mairwarra to the British Government in full sovereignty.

My friend! It will always give the greatest gratification to the representative of Her Majesty the Queen-Empress in this country to meet to the utmost the wishes of a Chief so loyal and enlightened as Your Highness. But the careful inquiries which I have instituted have shown that the territorial exchanges indicated by Your Highness could not at the present time be conveniently carried out. I have therefore reluctantly been compelled to give up the idea

It has, however, been suggested to me that the arrangements made in the year 1881 would be more agreeable to Your Highness if they were rendered more explicit by distinct assurance that they were not intended to prejudice or affect in any way Your Highness' rights of sovereignty over the Meywar-Mairwarra District. Such an assurance I now readily give, and I trust that it may remove from Your Highness' mind all uneasiness in this matter. The revision of the current settlement in the whole of Ajmere-Mairwarra has recently been under my consideration, and I am of opinion that in Meywar-Mairwarra no great enhancement of the revenue demand can be expected But to provide against such a contingency, I am willing to undertake that, if the receipts from the district should

at any time exceed Rs. 66,000 per annum, which sum represents the amount of the contributions payable by Your Highness on account of its administration and of the Meywar Bhil Corps and the Mairwarra Battalion, the surplus proceeds shall be paid over to the Oudeypore State. The Resident in Meywar will also be instructed to annually inform Your Highness in a 'Kharita' of the amount of the revenues of the Meywar-Mairwarra District during each year as it closes I need not, however, explain to Your Highness that this statement will be furnished not in order to revive the system of rendering and examining accounts which has been found inconvenient in the past, but merely for your Highness' perusal and information.

I feel assured that Your Highness will receive this statement of my views on an important and difficult matter in the cordial and loyal spirit which has always marked Your Highness' relations with the British Government."

Then we get the answer from the Maharana dated 13th November, 1883· "After compliments. I have received, in reply to the request which I addressed to Your Excellency with reference to the arrangement notified in 1881, affecting the district of Meywar-Mairwarra, Your Excellency's kind and friendly Kharita, dated the 16th October, 1883, in which you assure me that the wish of the Durbar for the exchange of the District is not conveniently at the present time practicable, that the arrangement which has now been made is not intended to interfere with, or affect the sovereign rights of, the Durbar over the tract; that if at any time . . ." etc, etc He concludes the letter: "2. Regarding Meywar-Mairwarra, requests have for a considerable period been preferred, but it has been reserved for Your Excellency's administration to take the matter into consideration, and to devise an arrangement favourable to me so far as present circumstances permit I have from the first felt assured of your kind and liberal feelings, and this reliance has been further strengthened by the conveyance of the kind intimation that, in the future, the Representative of Her Majesty the Queen-Empress in this country will in the matter of the achievement of my wishes, evince the utmost consideration For which assurance I have the pleasure to tender Your Excellency my thanks" Well, Sir, I venture to submit that that letter from the Viceroy, read in the light of the Kharitas which have preceded it, which are printed in the evidence before you, and which are not printed and ought to have been printed in Aitchison, shows plainly that the Government had no right whatever to detain those districts from Udaipur and that that Kharita of the Viceroy in 1883 is one that ought never to have been written, and that case is one which I venture to submit illustrates the gravity of the complaints against the Government of India

The next case I want to take, Sir, is Tripura (page 557). I took it in that order because it seemed to me that it was one which would throw most light on your Inquiry Now, Tripura is, as you know, away to the east In the volume of Aitchison No II, you will find at the end a map of the Province of Burma and I ask you kindly to take the map out I had intended having a large scale map printed with the evidence, but, to my regret, I find that, by an accident, that has not been done. I will endeavour to supply you with a slip to put in to make this case intelligible I will tell you what the case is It is

about the appropriation—not with any intention to annex, which, of course, is excluded since 1858—of an area of 3,516 square miles of the State territory in or since the year 1874. You know where the State of Tripura is, Sir, but if your colleagues will be so good as to look over your shoulder for a moment, the capital of the State of Tripura is Agartala, which is about the 24th parallel of latitude, about an inch from the edge of the map. You see a little to the east, parallel to the line of the railway, an area about three-quarters of an inch or an inch from it, Hill Tippera, and then further east still, angling south south-east, you see the Lushai Hills. The letter "L" is nearly opposite the "A" of Tippera, to the east, and the district in question is, very roughly speaking, between those two lines, the Hill Tippera and the Lushai Hills This is unintelligible unless you have got a map. I wanted you to see broadly the position of Tripura. You see, the red is Burma In ancient times the eastern boundary of Tippera was the State of Ava, as it was then called. On the north are the districts of Sylhet, which is north north-east of Agartala, about 2½ inches by the eye, and the district of Cachar, which is away to the east of Sylhet, about 2 inches You observe the physical geography of the country. From a point half way between the two parallels of 24 and 22 degrees, the rivers run north and then south of that line—they run south or west but the ranges of hills run north and south mostly. Now, before the year 1874 there had been many inquiries and there are various official publications stating that the boundary of Tripura was Burma, and then, at a later stage, it was de-limited to a river, the name of which is not on this map attached to Aitchison, but is, very roughly speaking, north of that tongue of the red of Burma that you see to the east of Darmangpui, a meridian of longitude running up through the "S" in "Lushai Hills." Now, if you will kindly take this map (copy of map handed in); this is the map that was produced a good many years ago in connection with this point You see, at the very north western corner of the map I have just handed in, Sylhet, and to the east of that, Cachar That is sufficient to identify, roughly speaking, the geography of this larger scale map. Then, from the word "Sylhet" you will observe a black line called the Langai River. That is a river running north between these ranges of hills that run north and south. It rises at a place called Betling Shibpeak. You see that there. Then the hills to the west of that River bordering the valley on the west are the Jampur Hills You see the name there of the two Betlings. Then the range to the east is the Hichak Hills, and then you come to a river which is dotted, called the Gatur River; and then, coming further east to a river, alongside which there is a dotted red line, called the Dhaleswari River. That river, the Dhaleswari River, was marked in the Government Surveys as the eastern boundary of the State at a later date than the time when the State extended up to Burma Burma, as you see on this large scale map, is at the eastern edge of the map. The State is not asking, and not contending for anything about the district east of the Dhaleswari River up to the Burma frontier at the present moment The case I am presenting to your attention, to illustrate the habits of the Government, relates only to the district west of the Dhaleswari River and up to the river that I first drew your attention to, the Langai River, which is bounded by the dotted red line on that large scale map. That is the district in question. Now

with your eye on these maps, I want you to allow me to give some details of the history and status of the State. The amount of the territory taken was 3,516 square miles Tripura State (which is sometimes spelt 'Tripura' and sometimes I think it is spelt 'Tipporah') Tripura (or Tipporah) State is a relic of the once powerful Kingdom of that name mentioned in the Great Sanskrit Epic Mahabharata Coming down to historical times, we find it mentioned in the Aini-Akbari and other contemporary records of the Moghul period The conquests of the Kings of Tripura from time to time gained for the Kingdom various possessions, till in the 16th Century its territories stretched "from the Sundarbans in the west to Burmah in the east, from Kamrup in the north to Burmah in the south." (Aitchison, Vol II, page 279) A century of struggle that followed, however, led to the ultimate occupation by the Mohammedan power of a portion of the plains which finally came under British rule in 1765—which was when they got the Dewani from the Moghul Empire—and this portion was lost to the State. It will have to be borne in mind that it was only such portion as had come under the rule of the Moghuls that the British subsequently acquired The rest of the State called "Hill Tripura" was never conquered, either by the Moghuls or by the English It is, and has always remained, under the rule of the Manikiya Dynasty. It appears that in the year 1765 the territories of Hill Tripura were overrun by Shamsher Ghazi, a marauder With the assistance of the English, Krishna Manikiya, the then Raja of Tripura, was able to regain his kingdom from Shamsher Ghazi The 1909 edition of Aitchison (Vol. II, page 279) misrepresents this fact in the following words: "Krishna Manikiya was made Raja by the aid of the English in 1765 in succession to Shamsher Ghazi, a marauder" It is necessary to tarry over this quotation. In the 1862 edition of Aitchison (Vol II, page 77) occurs the following passage: "The British Government has no treaty with Tipperah The Rajah of Tipperah stands in a peculiar position inasmuch as, in addition to the Hill territory known as 'Independent Tipperah' he is the holder of a very considerable Zemindari in the district of Tipperah in the plains, he receives his investiture from the British Government and is required to pay the usual Nazrana 'Independent Tipperah' is not held by gift from the British Government or its predecessors, or under any title derived from it or them, never having been subjected by the Moghul." I shall have occasion at another time to refer to these statements in Aitchison about the payment of Nazrana, but I will not bother now: To the correct statement in the edition of 1862 that "The British Government has no treaty with Tipperah" should be added the further fact that no Sanad was ever given to the State until 1904 Between the dates of the two editions—that is 1862 and 1909—the events dealt with in this memorandum took place by which Tripura lost possession of half its territory The State pays no tribute to the British Government and its Maharaja has full administrative, judicial and legislative powers Aitchison (Vol II, page 282, 1909 Ed) says "The chief has powers of passing sentences of death" "Independent Tippura" was the official designation of the State until 1866: this fact is fully proved by the quotation from Aitchison's edition of 1862 wherein Tripura is twice referred to as "Independent" which as you see is in inverted commas In

Thornton's Gazetteer, also published in 1857, Tripura is referred to as "Independent." This is the quotation: "Tipperah (Independent)—an extensive tract of mountainous country bounded on the north by the British districts of Sylhet and Cachar, on the east by the territory of Burma, on the south by Burma and Chittagong, and on the west by the British district of Tipperah. It is 130 miles in length from east to west and 80 miles in breadth from north to south, and contains an area of 7,632 square miles" The description of the boundary of the State marking with Burma on the east is important in this case. The State is now in direct political relations with the Government of India. Thornton's Gazatteer of 1857, which is quoted above, is a well-known standard authority.

Professor Holdsworth: When you talk about independence in this case, are you contending that Tripura is not subject to the Paramount Power at all?

Sir Leslie Scott: No, not for a moment.

Profesor Holdsworth: You laid a great deal of stress on its independence.

Sir Leslie Scott: No, it is only independent in the sense that it was a full-powered State before it came into relations with the British and accepted the paramountcy of the British. May I just add one sentence in consequence of your question. My submission is that the position of Tripura is very similar to the position of any one of the first-class Kathiawar States. I do not say it is exactly the same, and I do not want Tripura to think that I am saying it is the same, because each State has its own views upon certain particular aspects, but, so far as I am concerned, that is the broad position. It is very interesting, just because there is no treaty.

Rennell's Map, published in 1781, by order of the Honourable Court of Directors of the East India Company, following in the wake of two still earlier maps extant, also shows the eastern boundary of the State as touching the confines of the "Dominions of Ava" which is Burma. Evidence confirming the above public statements that Burmah was on the eastern portion of Hill Tripura will be found in paragraphs 6 and 7 of Exhibit A, to which I will refer presently. The Lushai Hills are inhabited by a mixed race of semi-savage hill people. On the big map the Lushai Hills are on the eastern side of the shaded portions where the hills are marked, about seven inches from the bottom of the map. You see the watershed runs roughly across that country east and west. It is all about the Lushai Hills and the Lushai tribes inhabiting those hills that this case turns. The Lushai Hills are inhabited by a mixed race of semi-savage hill people, divided into clans, and of criminal tendencies. They occasionally committed crime in British territory. Either to punish them for depredations of for other imperial and strategic objects, the British Government undertook expeditions against the Lushais in the years 1845 and 1850, and again in 1872. These expeditions were stopped for some time, after which the Government decided to adopt a more vigorous policy, an important feature of which was: 'Inner Lines' along the British frontier and the Tippura boundaries to be fixed and protected by guard posts, the defences of the Tippera frontier being undertaken by the Ruler of the State. That

means up at the north by Sylhet and Cachar. That is the district which the British wanted to protect from these Lushai tribes which inhabited all these ranges of hills along the Dhaleswari River, and were likely to raid these districts to the north. A Government notification was issued on the 23rd June, 1874. It was "The Honourable the Lieutenant Governor of Bengal is pleased to declare that the eastern boundary of Hill Tippora shall be as follows:—The eastern boundary of Tipperah from the triple junction on District Sylhet and Chittagong"—that is up at the north—"shall run south along the Langai River (flowing between the Jampur and the Haichak-Chatta Chura ranges) to its source in the Betling-Shibpeak, and thence following the watershed of the hills across to the peak of Doljuree"—I have not got that marked here —"as defined on the map of that part of the country of Badgley, Officiating Deputy Superintendent of Survey, then by a straight line to the Surdaing peak and on by the boundary, as shown on the maps of Hill Tipperah and Chittagong, by T. H. O'Donnel, Esq, Revenue Surveyor, to along the Fanni River as far as the village Ramgarh."I have not been able to identify this because I have not a map of a sufficiently large scale, but the main point is that the boundary is put far away to the west of the Burma frontier along what is called the Langai River.

Chairman That is shown on the big map.

Sir Leslie Scott I see it is From that you can guess which is the Dhaleswari River. You can see the Gatur River on the small-scale map. You can see that marked just by the word "Ijal" and the next river to it presumably the Dhaleswari River—perhaps it is the Tiwa River, but I am not sure. I am not asking you to settle the boundary, obviously, so that the exact point is immaterial, but the broad point is that that is a notification declaring the Eastern frontier of Hill Tripura to be the Langai River That is the point, and I think the only point of importance, for which you want a map. You just want to see the sort of thing that was done The case for the State is that the British Government had no right to do anything of the kind Quite roughly, the State has been asking for the restoration of that territory ever since and has completely failed, and it is now treated as British territory That is 1874, long subsequent to 1858

Colonel Peel: Several parts of the world make the same complaint, do they not, that they are now British territory?

Sir Leslie Scott: Well, I will read the story to you, Sir Lest you should be unduly alarmed at the size of the exhibits, we thought it desirable to let you have the memorial sent in by the State to the Government some time ago, on the 31st December, 1919, with the original exhibits I do not propose to ask the Committee to read the whole of that, but I shall have to read certain parts It is possible you are very familiar with this question already

Chairman. No.

Sir Leslie Scott Of course, in one sense this is not a boundary dispute between the State and the Crown, because it involves a very large area of territory, but it is a boundary dispute in the same sort of sense as the Labrador-Canada dispute which was decided by the

Privy Council, you will remember, a year or two ago It is obvious that that is a matter that calls for adjudication with care in accordance with the evidence of the case, on the assumption, of course, that the British Government is willing that the case should be adjudicated upon according to the truth and that there is no political reason for interfering in it. Of course, it is on that assumption that the case is put before you: on that assumption as illustrating one type of encroachment from which the States may suffer under the present machinery.

Now if you would not mind glancing at the appendices for a moment; the first exhibit is called Exhibit A. That is, as you see, a memorial to Lord Chelmsford sent in at the end of 1919 (31st December, 1919). To that exhibit there are attached a large number of documents. On page 569, a document appears called "The dispute regarding the Eastern boundary of Tippera State." That is a long statement of the facts of the case and is a note attached to the memorial to the Viceroy. That runs on for a long way to page 584. I shall not attempt to go through it in detail; it would not be right. On page 584 you will find a number of appendices. Those are appendices to the memorial to the Viceroy.

Chairman: You have put the memorial in *en bloc*?

Sir Leslie Scott: Yes; we thought that was the simplest and plainest way of dealing with the matter, not that you need read the whole. Then on page 596 you get the second exhibit belonging to your own evidence, Exhibit B. The first exhibit is Exhibit A, the memorial with all its appendices The second is this Exhibit B, with various letters and so on, with various appendices This is a communication (dated 21st September, 1922) sent to the Political Agent with appendices attached to it. All these appendices from page 599 onwards are appendices attached to that letter. It is very confusing.

Chairman: I see it now.

Sir Leslie Scott: With an explanation it is intelligible. Then the last exhibit of our evidence is on page 610, Exhibit C (No. 1019, P. VI, 5, dated 11th July, 1923, from the Political Agent, to the Minister, Tripura). That is the method of arrangement of those documents.

Chairman: This is Exhibit C.

Sir Leslie Scott: Yes. It is quite convenient, as you have your eye on it, to dispose of that now in order to see what the result is: ". . . . I am directed to say that the matter was referred to the Government of India . . . . (2) As the memorial does not disclose any new fact the Government of India regret that they see no sufficient reason for reconsidering their previous orders (3) As regards the Durbar's request that the matter should be referred to a court of Arbitration, the Government of India have intimated that this is not a case for the determination of which 'independent advice is desirable' and they, moreover, hold that a matter which vitally concerns a number of persons who have been British subjects for more than a quarter of a century should not be subjected to arbitration. They are accordingly unable to accede to the Durbar's request." I make two comments on that: Firstly, I should have thought it was

par excellence a case where independent advice was desirable on elementary grounds of justice—the most elementary one can think of; and, secondly, that the drawback of sending British subjects into the State territory must be read in the light of this fact, that the people living in that territory have for many years been migrating in great numbers by their own choice into the State of Tippera because they like it better.

Minutes of the Evidence given before the Indian States Committee at Montague House, Whitehall, S.W.1.

Monday, 29th October, 1928, at 3.30 p.m.

PRESENT

Sir HARCOURT BUTLER, G C S I., G C I.E , *Chairman*
Colonel The Honourable SIDNEY C. PEEL, D S.O
Professor W. S. HOLDSWORTH, K C
Lieutenant-Colonel G D OGILVIE, C I.E *Secretary*.

Their Highnesses the MAHARAJAS of KASHMIR, PATIALA and NAWANAGAR, and the NAWAB of BHOPAL

The Right Honourable Sir LESLIE SCOTT, K C , M P , appeared on behalf of the Standing Committee of the Chamber of Princes

Sir Leslie Scott: On Thursday, Sir, I was in the middle of the case of Tripura, and had just read to you the last Appendix (page 610), that is a letter in which in 1923 the Political Agent reported that the Government were not prepared to re-open the question, and, in the answer to the request that the issues should be referred to a Court of Arbitration, intimated that they did not regard it as a case in which independent advice was desirable I submitted my comment to you on the last occasion, I will not repeat it, but I have here the Resolution of the Government of India, Foreign and Political Department, of the 29th October, 1920, No. 427, about Courts of Inquiry, with which the Chairman of the Committee is familiar, and I want to submit that the Tripura case is essentially the kind of case that comes within that Resolution. Perhaps it would be convenient if we had the Resolution printed as an *Appendix to the proceedings, then I need not refer to* it in detail (Appendix " R ")

There was no reason at this time (viz in 1874) for the Government to wish to annex the country in question as it then had no attraction or value either for Government or Tripura, nor was there any reason for Government to dispossess Tripura of any of the territory properly belonging to it, as Government was on good terms with Tripura and desired and secured its co-operation in dealing with the predatory tribes who infested the Lushai Hills Then we pass on now, Sir, to Exhibit XIII (page 588) This is from the Assistant Political Agent to the Dewan (No 1066 dated 7th January 1887): " I have the honour to address you on the subject of the eastern boundary of this State 2. From Mr. Yule's report, noted in the margin "—14th January 1851

—" it will be seen that formerly Dhaleswari River was understood to be the eastern boundary of the Maharaja's territory. In that Report there are, in paragraph 39, the following lines 'Lieutenant Fisher fixed as the boundary (continuing from Pherua-Dharmanager valley) a line running east from the source of the Thal nadi, mentioned in the preceding case, to the Chattuchura hill and thence to the Dhaleswari, a stream running nearly due south to north whose eastern bank belongs to Cachar' and again in paragraph 48 the following, 'throughout the disputed part of the boundary there the line is determined as follows (vide the annexed complete sketch), commencing from the east at Dhaleswari river it runs from the Chattuchura hill' etc. 3 For administrative and political convenience, however"—this is the important paragraph—" it was subsequently found expedient to have the Langai as the eastern boundary of the State, and it was duly communicated to His Highness. 4. The Commissioner of the Division wishes to be informed of the views of the Maharaja on the subject mentioned above I beg accordingly to ask that the matter may be laid before His Highness and his views reported at an early convenience." You observe, Sir, that the date of this is the 7th January, 1887, 13 years after the date of fixing the boundary, and you get there the frank admission that it was so fixed for administrative and political convenience and on grounds of expediency. My submission, Sir, is that that is the kind of decision that it is not competent for the Government to take They dare not call it an annexation because that would obviously be a breach of the undertaking of 1858 given by Queen Victoria, and they cannot do in fact what they cannot do in form, and I do not think that really the Government would want to say that it does it. The second comment is that it is plain that the matter was still open then because the Political Agent is asking the views of the Maharaja about it; and from then onwards the matter is treated as one depending very largely on the state of the Lushai tribes, as to whether peace had completely been restored or whether they were still turbulent and disposed to make inroads into other people's territory, and it was kept open on these lines for a long time, and my submission is that it is still open to-day and that if the sovereignty of the State is to be regarded in accordance with the obligations, then that course must be taken. In answer to that the State addressed a long letter (No. 646 dated 15th March 1887) referring to all the old evidence very clearly and pointing out in the ninth paragraph (Exhibit XIV): "In 1874 the question of the eastern boundary of Hill Tipperah came up in connection with the frontier guard posts. Captain E. G Lillingston, the then Political Agent, in his No. 60, dated 3rd March, 1874, wrote to the Maharajah as follows: '2 Mr. Power informs me that he has already pointed out to you that you are in error in supposing that the country east of the boundary line marked by the Langai river has been taken up by the Government. 3 I would again intimate to you that the Haichak range was excluded from your boundary, not that it might become Government territory, but that all complications, which would probably arise in case possession thereof were claimed by tribes inhabiting the Lushai country, might be avoided.' 10. It would appear from the above that His Highness was repeatedly assured that the real boundary of his dominions to the east

was not the River Langai, but the same, i.e., the eastern boundary of this territory could not be further west than the Dhaleswari river.
11. Now that the circumstances which rendered a deviation from the original line of boundary necessary are no longer in existence, I am desired to request that as arbiters of the destinies of Native Princes, the Government will be graciously pleased to accept the river Dhaleswari as the eastern boundary of this State and pass orders accordingly."

Then, Sir, you get the answer, Exhibit XV (dated 20th September, 1890), of which I will only read the last paragraph "But recent events in the Lushai country, or the successes of the British arms in that country, having gone to show that there can be no more fear of complications of any serious nature arising in case the country in question be now restored to His Highness, I am constrained to re-open the question, and to ask the favour of your so interfering on behalf of His Highness the Maharajah as the India Government may be graciously pleased to restore the said country to him" You get the same thing repeated in the next year, paragraph 2 of Appendix XVI (No 406 dated 6th April, 1891 from the Minister to the Political Agent). "As peace has now been established" it says and then on the 3rd August 1891, Appendix XVII (No 1046 H T-IX-14) the officiating Commissioner points out that two Officers had been murdered, and that the district was still disturbed—"never in so disturbed a state since 1871-72." You will observe in that letter there is no denial of the State's fundamental right, but the answer is put upon the simple ground that temporary conditions must still continue, because of this disturbed state of the territory—a circumstance on which no comment need be made

Then, Appendix XVIII, dated 19th September, 1891, comes this letter from the Political Agent referring to the previous correspondence. "I beg to forward an extract from the Commissioner's demi official of the 16th inst., on the subject" and then, you will see the extract "After ascertaining the present state of the Klong or Dhaleswari Valley, I must decline to take up the representation made for Hill Tipperah regarding it till the Minister himself, or someone of equal trustworthiness and responsibility, has personally traversed it and ascertained the condition of its western side, and the attitude of the people inhabiting it." He writes the letter Appendix XIX (dated 1st October, 1891 ? date shown as 31st September, 1891), asking for a reply within seven days.

Thereupon a Conference was held, at which the Commissioner, the Political Agent, the Assistant Political Agent and the Maharajah's Manager, were present to see what could be done An inquiry was made into the condition of the district, and, upon the 11th October, the Report was made which is set out there I am not going to trouble you with the details, but it is a request that when "peace is established" (as you will find in paragraph 1 of Appendix XX —Letter dated 11th October, 1891, to the Political Agent) the State asks for the matter to be dealt with—this is a fundamental point on broad political grounds—in paragraph 7 comes this passage. "The tribes enumerated in the concluding sentence of the preceding paragraph are subjects of His Highness, for whose house they have innate regard and love" It points out that they will be prepared to go

and develop the district, and help to pacify it as opportunity offers by cultivating the country.

Then you get an interval of six years In 1897, Appendix XXI, the State writes again on the subject (No. 140—III—88, dated 1st December, 1897) You will see the sentence beginning: "This notification (23rd June, 1874) necessarily led to much misconception, which, however, was removed by the assurance given by Mr. Power and Captain E. G. Lillingston, the Political Agents, who explained to His Highness that the territory beyond the Langai was not meant to be permanently severed from his dominions, but the above declaration was only made to avoid Lushai complications." Then it refers to the subsequent letters to which I have just now referred the Committee The last sentence but one is: "Nothing has been heard on the subject since then"—that is, since 1891—"but as peace has now been completely restored, and the apprehensions which necessitated the Order of 1874 are no longer in existence" etc., asking for the matter to be reconsidered That was in 1897. Then, in 1905, Appendix XXII, there is a further request (No. 58—XI—1, dated 26th May, 1905), and that finally led up, through an application in 1913, to the Memorial to the Political Agent (page 596), which is Exhibit B, dated 21st September, 1922, in which the case is put very simply, and, in my submission, very powerfully—with its various appendices which are numbered and which follow it. That is turned down, Appendix C, which I read to you on the last occasion, by a *non possumus* on the part of the Government, a refusal to submit the matter to impartial arbitrament. Without going into detail, I think that gives you an idea of the character of the case It is a good one as illustrating the difficulty which arises My submission, on behalf of the States, is that there is only one solution to cases of this kind; and that is to carry out the obligations that the Government have to these States to observe their sovereignty, and that the relations between the States and the Crown can only be satisfactorily maintained on the basis of real genuine cordiality on both sides, so that the right spirit may be preserved if the Crown always insists on what is fundamentally just

The next one I was proposing to deal with was the case of the Simla Hill States, but would the Committee mind my postponing that till His Highness of Patiala is able to be present? He had hoped to have been here this afternoon, but I understand that he is still indisposed

The only remaining one in this group is the case of Sangli, and that, as I told you the other day, I want to postpone till I come to a later case of Sangli where I can take the three together

I therefore pass now to the second head of A (a) ii, head b., and I am going to select these and deal with them in a certain order to make the points as clear as I can The first one is (page 621) the case of Bhopal. The heading at the top of page 621 is "Appropriation by the Crown of Sovereign Rights over defined classes of persons"—the last being over defined areas. The chief classes of persons involved here are European British subjects and Europeans and Americans and Indian British subjects, and then persons in the employ of the Agencies and Residencies, and troops Those are the chief classes On page 621 you have the case of the Bhopal State, which raises the

point very clearly, because in Article 9 of the Treaty of 1818 (Aitchison, Vol. IV, page 298), it is provided · "The Nawab and his heirs and successors shall remain absolute Rulers of their country, and the jurisdiction of the British Government shall not in any manner be introduced into that principality." So you will observe no exception is made there as regards any particular type of person. Jurisdiction is not given to the British Government over British subjects, or over anybody else. In the Treaty of Sawantwadi, with which, as you remember, we came into relations as early as 1730 (Treaty of 1812, Article IX, Vol. VII of Aitchison, page 305), it is provided expressly that British subjects residing within the territories of the Raja shall be solely amenable to the British authority. So that you get the contrast That was in 1812.

The Agency had communicated some rules to be followed in cases when British subjects committed crimes in State territory. Her Highness expressed her disapproval (6th August, 1866), and asked for a clear exposition of the same In reply, the Political Agent (24th August, 1866), forwarded the Kharita of the Agent to the Governor-General, dated 17th August, 1866. In this Kharita the Agent to the Governor-General says "In case any crime is committed within your territories, and one of the parties to the case claims to be a British subject and wants transfer of the case to the Political Agent, then your officials must report it to you so that the petition, together with evidence for or against the claim, may be sent to the Political Agent, who is then to decide the following points (1) Whether the claim is right or wrong; (2) If it is right, should the case be tried by him or left to be tried by your Courts." The Agent to the Governor-General added. "If any British subject, being entitled to the protection of the Political Agent, accuses an Indian Ruler of violence and oppression, the Ruler will be asked to furnish facts of the case The decision what procedure should be adopted in the case will rest upon the furnished facts I am sorry I cannot be more clear on the subject" Her Highness the Begum protested In my submission that was a claim to exercise jurisdiction over British subjects for which there is no possible legal justification, and it is continued to the present time. As you are aware, that claim has been put forward in general terms by the Government of India to have jurisdiction over British subjects in all State territories In my respectful submission (and it is a very important point) that claim is legally erroneous, unless the right has been expressly ceded, as it was in the case of Sawantwadi, by treaty or by some definite act of consent amounting to cession

The next one, Sir, is the Rewa case (page 687). You will see that this throws some light upon that question The reason that the first paragraph is numbered 12 is because all Rewa cases were put in one continuous document. The contention of the Durbar is that in accordance with their treaties there is no restriction on their power and right—as a sovereign State—to arrest and try any person committing any offence against the Rewa State Laws within the Rewa territory. All such offenders are amenable to the jurisdiction of the Maharaja of Rewa who may delegate his authority to his courts or officers, or even, by agreement, to the officers of Government, but the judicial power and authority of the Maharaja of Rewa cannot be usurped or

assumed, as has been done under "Political Practice" by the Government of India and its officers. This states a rule; exception can be made by arrangements between the two parties. A few instances of the attitude taken in the past by the Political Officers are now produced. There is an interesting case. A man who was temporarily engaged as a Punkha coolie was convicted of an offence under 498 I.P.C. and with the Agency Surgeon's permission tried by the Durbar Court. The trial would have proceeded in ordinary course, but the Political Agent, very jealous of his jurisdiction, wired (20th September, 1905) to the Durbar to quash the proceedings against the man and release him The Durbar complied with the Political Agent's request, but asked the Political Agent (D.O. No 4645, dated 30th September, 1905) to quote authority in support of his request. The reply (No 3923, dated 5th October, 1905) was that there were no rules on the point and that the Political Agent relied on the usual practice. The Durbar (D.O. 5704, dated 13th December, 1905) continued to press the Political Agent for authority. After some time the Political Agent (No 3180, dated 10th October, 1906) forwarded certain rules arrived at *by discussion in a Conference of Political Officers. Be it noted that* though it concerned the various Durbars the rules were essentially one sided inasmuch as the conference was one of only Political officers and no other persons. This was in 1906. The relevant documents are set out · Exhibits Numbers 14 onwards from page 691 onwards. I want to quote only two sentences from one of them, the one about the conference of Political Officers On page 692 (Exhibit 18), the Political Agent writes (No 3180, dated 10th October, 1906): "2. I am desired to inform you that the question of jurisdiction of Native State Courts over Government servants and private servants of Government officers residing within a State was discussed at a meeting of Political officers held at Indore in July last The general view was that while the right must undoubtedly be maintained of requiring that such persons should be exempt from trial by Durbar Courts, no exception need be taken to their being so tried for offences which are committed in their private capacity, and which are in no way connected with their duties, provided that the case is fairly tried and that the sentence, where guilt is proved, is reasonable. 3 I am however to explain (i) that the Political officer in all such cases can claim jurisdiction, whenever he thinks it desirable, (ii) that if he concedes jurisdiction, he does so purely for the sake of convenience and expediency; and (iii) that the Durbar should invariably inform the Political Agent with the least possible delay of the arrest of any such individuals, and not allow the trial to be proceeded with until the Political Agent's sanction has been received With regard to the second of these provisos it would be convenient and expedient to concede jurisdiction in a case in which the Political Agent himself was complainant: e g., a case of theft of his property committed by one of his private servants 4 I may add that my action in the particular case which led to this reference was fully supported and warranted by a Resolution of Government of 1871 in which, among other things, it emphatically lays down that jurisdiction should remain with the Political Agent in all cases in which the accused are servants of the British Government, or servants of the Political Agent, or of any officer of Government officially employed within the State, whether the accused be a

British subject or not." In order to avoid misconception, I want to say at once, as I have said before, that any rights ordinarily accorded to diplomatic agents in regard to the immunity of themselves and their staff are accorded by the States, and it is only when the claim goes beyond that that they desire to raise a question. Here you observe that it is a gathering of Political Officers who propose, in effect, to legislate for the matter, and that the claim is perfectly general; over any person in Government employ or in the employ of the Political Agent or any officer of the Government who has official duties within the State.

More than 20 years after the above, in 1927, when the case cited in paragraphs 24 to 26 below* was the subject of correspondence between the Political Agent and the Durbar, the former communicated (No. 4760/483-20, dated 31st October, 1927) for the first time certain rules regarding trial of Government servants framed and issued in 1920. The same remark, viz, that in arriving at an important decision the Durbars concerned have not been consulted, applies to these rules also. And the Durbar refrained from objecting to the position taken by the Government of India in these rules, simply because they thought they had as well put forward their point of view before the States Inquiry Committee, the appointment of which was announced soon after the above communication of the Political Agent was received.

That communication from the Political Agent (page 693) is rather instructive: "I have the honour to refer to the question of the procedure to be followed in connection with the trial of criminal offences committed by servants of the British Government in the territory of Indian States It appears that the last communication to the Durbar regarding this matter was this Agency letter No 3180, dated the 10th October, 1906 But the latest communication from the Government of India on the subject was issued in 1920 and as its purport was not intimated to the Durbar at the time, I have been instructed by the Honourable the Agent to the Governor-General to address you officially so that there may be no further risk of oversight or misunderstanding in connection with any future cases of this sort 2 I am accordingly to observe that, by the law of British India, all servants of the King are amenable to British Indian Jurisdiction for offences committed in the territories of an Indian State The Government of India are not prepared to relinquish this principle though Political Officers have discretion to invite the Durbar, in specific cases, to have such trials conducted in the State Courts 3 In particular the Government of India are willing that in the following cases Indian servants of Government shall be amenable to State Courts, namely: (i) for offences committed while they are on leave or absent from duty in State territory; (ii) for offences not connected with their official duties which are committed in State territory 4 It is however to be understood that in all such cases a reference should be made by the Durbar to the Political Agent before the trial is commenced, and that even when the trial is left to be conducted by a State Court, the accused would retain a right of representation to the Political authorities, to whom the result of

* Case of one, M. Ghazan (a servant of the Rewa Durbar in their Settlement Department) who was accused and convicted of bribery and corruption.

such trial should also be reported 5. Under the instructions of the Government of India the Honourable the Agent to the Governor-General has fixed one week as the period within which reports of arrests of Civilian Indian Servants of British Government and of intention to try them in State Courts should reach the Political Agent, and has asked that this time limit be strictly adhered to. Similarly I am to request that instructions may be issued to the effect that no criminal proceedings should be commenced against Government employees until the expiry of one week after notification of arrest has been given to the Political Agent. This is in order that the latter may be able to make representations on behalf of the accused should he consider it desirable to do so. . . ."

There is nothing more in that letter, Sir. I want to comment on that without arguing it in detail. The gist of the letter is contained in paragraph 2 The contention that all servants of the King are amenable to British-Indian jurisdiction because the law of British-India says so, reveals in my submisson a complete confuson of ideas. It is quite true that the servants of the King employed by the Government of India are in one sense amenable to British-Indian jurisdiction, in exactly the same way that you or I, Sir, if we visit France, cannot throw off our allegiance to the King, and remain for certain purposes subject to the jurisdiction of the Courts in England But that does not mean that the local jurisdiction is ousted It is a purely personal jurisdiction, quite separate from the territorial sovereignty which every sovereign has within his own territory. If we go to France and commit an offence in France, we have no ground for objecting if we are dealt with by the French Police and the French Courts, and our Ambassador could raise no objection either

Colonel Peel Could you, for instance, be dealt with on a case of theft? If you committed a theft in France, could you be dealt with by the Courts here?

Sir Leslie Scott · I do not think you could

Colonel Peel By British-Indian law you could, could not you?

Sir Leslie Scott. By British-Indian law, yes, but—and this is the limit which is forgotten—that law cannot give jurisdiction to a British Court inside the territory of the foreign sovereign, because the Ruler of the Indian State for this purpose is such a foreign sovereign. What *it can do is to give jurisdiction to try* that man when he comes back within the British-Indian jurisdiction; that is the exact limit. If the British-Indian subject, European or Indian, in an Indian State commits an offence against the Indian Penal Code, by the law of British India that man can be arrested when he gets back into British jurisdiction and there prosecuted for having committed that offence in the Indian State.

Colonel Peel: Yes, but that is quite a different state of things from the parallel you suggested just now; it is quite a different case from the law between England and France, for instance

Sir Leslie Scott. I agree it is quite different except this, that there are certain offences which, committed by an English subject abroad, can be dealt with when he returns to England; they are very limited in number.

Colonel Peel: They are very few; in fact, they are so few, are not they, that the parallel breaks down?

Sir Leslie Scott: But it does not affect my argument at all. All I was referring to the analogy for was this, that there may be, over a British subject in France, some jurisdiction of the British Crown which can be exercised over him when he returns to British jurisdiction. But neither he nor the British Sovereign can contend that he is not subject to the jurisdiction of the French Courts. The big rule is that all sovereignty is territorial.

Colonel Peel: Yes, but you are introducing an analogy, are you not, now between States which have full jurisdiction of all kinds, and the relation between British-India and the Indian States?

Sir Leslie Scott: I am saying that that is an analogy, and in my submission, a perfect analogy for that particular purpose, namely, that the jurisdiction of the Indian sovereign within his territory is complete and absolute except in so far as he has conceded it to the British Crown That is the exact point and that is the reason why, if I am right upon that submission, the analogy of France which I gave just now is perfect—just for that point of view I referred to it in order to emphasise the general rule that sovereignty is territorial.

Colonel Peel. Yes The only doubt raised in my mind is that the circumstances are so different in a case between England and France, the law is so different that it looks as though there must be some other difference as well, a deeper-seated difference?

Sir Leslie Scott: I think the analogy is perfect if used for the purpose for which I quoted it, namely, to show what territorial sovereignty is The point is that the territorial sovereignty extends not only to subjects but to other persons resident within the jurisdiction It is the presence of the person within the jurisdiction that creates the right over the person That is recognised by every law, not merely international law, but the municipal law of every country, so far as I know

Colonel Peel Not all countries

Sir Leslie Scott. I do not know any country in which it is not

Colonel Peel. There are the countries where there are capitulations

Sir Leslie Scott: That is an exception to the general rule It is because of the rule that the presence of a person within the territory confers on the Sovereign of the territory jurisdiction over him; we have obtained the capitulations in China or in Turkey in order to get out of it

Colonel Peel. I was not going into that point

Sir Leslie Scott You are quite right, that is a very good illustration of the precise point The reason why under the capitulations we have the right to exercise British jurisdiction within a foreign country is because the Sovereign of the foreign country makes capitulation which is a cession of jurisdiction That is the exact point

Colonel Peel: It affects the Native States in their foregn relations.

Sir Leslie Scott It does not depend on foreign relations at all. The exercise of the judicial sovereignty within your own territory, if you

are a Sovereign, is a matter of domestic or internal sovereignty, and in the case of a State that preserves the whole of its internal sovereignty it has complete jurisdiction. Take the case of Sawantwadi which I quoted to you. There was the exception, carved out of the complete sovereignty of Sawantwadi by that Treaty of 1812

Colonel Peel: You are rather treating it on broad lines; a question of foreign relations may arise out of it.

Sir Leslie Scott: I think not, Sir, with great respect.

Colonel Peel: It becomes a question of foreign affairs.

Sir Leslie Scott: A question of foreign relations may arise out of it If, for instance, the British Government were to ill-treat an American in this country, a diplomatic incident would result, but, if an American is tried in accordance with the law of this country by the Courts of this country on exactly the same footing as an English citizen is tried, then no complaint arises because it is an exercise of the internal sovereignty to which no objection can be taken. My point is that in that context and in that respect, each of these full power States who have not given up their jurisdiction still keep that jurisdiction, and the British Crown has no right to take it from them. I will develop that afterwards, I only want to make the point here to-day and to leave it, I do not want to argue it now. I just answered the question that you put to me If I am right, the fallacy of paragraph 2 of that letter (page 693) is that, although by the law of British India, it is expressly provided that if a servant of the King in the British-Indian jurisdiction commits an offence, he will be amenable to the Courts of British India, but that is when he gets back. He cannot be arrested in the territory of the foreign State and brought back for that purpose You will find that in the Extradition Act of British India there are some very important provisions As a matter of fact, in the Indian Extradition Act, you will find this principle recognised, that it all depends upon the consent of the Sovereigns of the Indian States In Section 18 it provides: "Nothing in this Act shall derogate from the provisions of any Treaty for the extradition of offenders, and the procedure provided by any such Treaty shall be followed in any case to which it applies and the provisions of this Act shall be modified accordingly"

Then, Sir, that contention, that, because the British-Indian legislature had passed a Statute, that therefore the Sovereign of Rewa is bound by it, is put in a letter (page 695—Exhibit 23) from the Political Agent (No. 1227.C. dated 15th December, 1904), the second paragraph. "The law on the subject is contained in Section 4 (3) of the Indian Penal Code, which lays down that offences punishable under the Code, if committed by any Government servants, whether British subjects or not, within the territory of any Native Chief, are triable by British Courts." That is perfectly true There may be power in the Indian legislature to pass that legislation so as to bind the British-Indian Court to try that case under British-Indian legislation. On that I express no opinion It cannot go further than authorising the Court to try the offender when he comes within the jurisdiction of the British-Indian Court. There are a number of instances given in this case for

Rewa under the succeeding paragraphs and Professor Holdsworth certainly will find a good many of considerable legal interest as affecting the questions that I am now discussing with the Committee.

Colonel Peel: May I ask one more question? Are there any cases of any persons being arrested within an Indian State by the British Authorities?

Sir Leslie Scott: I am not sure that there is one in Rewa.

Colonel Peel: Unless that happened I do not see that any breach was committed according to your contention.

Sir Leslie Scott: Oh! yes; the point is that the British Authorities have applied this principle. They have said that if a person of this category commits an offence inside the State of Rewa, the Rewa Court has no right to try him, but must hand that person over to the Agency, and the Agency compels him to be tried by the Political Agent or Resident, and if a decision is given in a case of that kind by a Rewa Court, the Political Agent demands that the conviction should be quashed, that the man should be handed over for trial by the Political Agent's Court.

Colonel Peel: The Rewa Court hands him over

Sir Leslie Scott: Because they are compelled to, not with their consent, they do it because they are told by the Government that this rule is of universal application, and they have to obey it

Colonel Peel: Is it a case of practice?

Sir Leslie Scott: The submission they make is that they ought not to be compelled, because it is wrong; it is contrary to their treaty rights; by their treaty they are entitled to have complete internal sovereignty, and the Government has guarateed, many of them, as for instance, Rewa, in the passage I have cited, absolute internal sovereignty, and no interference by the British Government; they say this is a direct breach of that Treaty; that is the point.

Colonel Peel: You are contending that it is a wrong practice?

Sir Leslie Scott, Yes, it is a wrong practice

Colonel Peel: Not that the Government of India is acting illegally, but that the practice is a wrong one, according to the constitution of the Indian Empire.

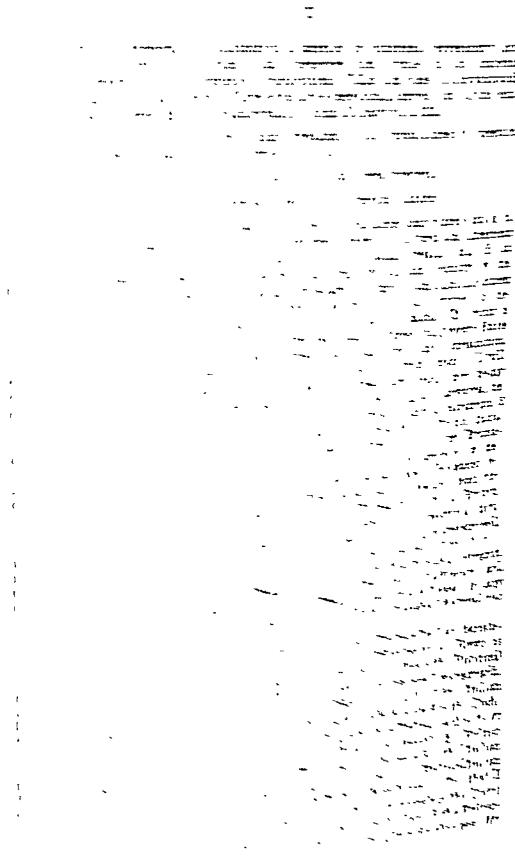
Sir Leslie Scott: I should have thought, with respect, that these two propositions of yours were identical. If it is a wrong practice the action is illegal, illegal in this sense, that it is a breach of the legal relationship created by the Treaty or other contractual agreement between the State and the Crown.

Colonel Peel: What I meant was that the original consent or whatever you may call it is forced out of the Indian State—your argument is that original exercise of force may be wrong but the consequence of it may be correct.

Sir Leslie Scott. My submission is that they have given no consent.

Colonel Peel. The evidence is that they do it

Sir Leslie Scott The evidence is they do it because they were ordered to do it



is under trial in a Durbar Court there is a right to representation to the Political Agent who should not, however, interfere save in special circumstances." What those "special circumstances" were in the trial of M. Ghazan was never made clear to the Durbar. Still, the paternal interest taken by the Political Agent in M. Ghazan carried him, perhaps, too far. The extent to which M. Ghazan, an ordinary servant of the Durbar, convicted of bribery and corruption, had succeeded in creating on the Political Agent the impression that the Durbar were actuated by partial motives in convicting him may well be imagined from an account of an interview which the Political Agent had with His Highness the Maharaja Saheb Bahadur and his Adviser and Secretary. Well, Sir, the interview is there (Political Agent's Memorandum—undated); I am not going to trouble to go into it in detail

Now I turn to the Patiala case (page 661). I think the Exhibits speak for themselves. The Jind case (page 629) is identical with this Patiala case. You remember, Jind and Patiala both have the same Sanad of 1860. Exhibit A (Letter No 1389, I.A, dated 18th April, 1905, from Under-Secretary to the Government of India, Foreign Department, to the Resident in Mysore) "I am directed to reply to Mr Tucker's letter, No 4974, dated the 4th October, 1904, regarding the jurisdiction of Criminal Courts in Native States over native officers and soldiers of the Indian Army. 2 The Mysore Durbar have been *informed that the jurisdiction of such Courts is limited to* (i) the case of a native soldier who, while on leave within a Native State, commits an offence which renders him subject to arrest; (ii) that of a native soldier who, while on leave within a Native State, is arrested for an offence committed by him in that State on some previous occasion; *provided that the offence so committed is one of* those entered in the Schedule of the Indian Extradition Act They now enquire what is the correct procedure in the following cases (a) when a native soldier of the Indian Army commits, within a Native State, while not on leave, an offence which does not subject *him to arrest, (b) when a native soldier of the Indian Army commits,* within the State, while on leave, an offence which does not subject him to arrest, (c) when a native soldier of the Indian Army commits, within the State, while not on leave, an offence which does subject him to arrest; they also desire to know (d) whether an offence previously committed in a Native State [(ii) *supra*] means an offence committed by such soldier when not on leave or when on leave; and (e) what steps they can take when the offence referred to under (d) is not included in the Schedule to the Indian Extradition Act 3 I am to inform you that as regards (a) the Courts of Native States have no jurisdiction over a native officer or soldier of the Indian Army who, while not on leave, commits any kind of offence within their territories As regards (b) the native officer or soldier who, while on leave in a Native State, commits an offence of any kind against the law of such State is amenable to the jurisdiction of the State courts"—That sentence seems to be just the opposite of what was said in some of the Rewa correspondence—"As to case (c) the Durbar should be informed that the offender may be arrested by State authority in any case in which the law of the State permits

Colonel Peel: They were ordered some time ago to conform to a particular rule which goes back to a previous date; that is all I mean.

Sir Leslie Scott: Oh! yes, very often that is so. Of course, if they do not conform to a rule of that kind laid down, then pressure is exerted, and they know quite well that they have got no power to resist. That is the fundamental background of the whole of the relationship with the States under the original arrangement by which they have given up their foreign relations, and, broadly speaking, their military independence. They have got no physical force; physical force is entirely on the side of the Government. I am not making any comment on that, I am merely stating that as a fact. The States do not ask any comment to be made. That is, in fact, the position, and therefore they cannot resist Of course, the question that is raised in some of these cases is one not relating to Government servants, but for instance to British-India subjects, and there the position is a very curious one because the Government claims jurisdiction in some cases, and not in others That is sufficient to explain what the Rewa case is, Sir. I am told, Sir, in answer to Colonel Peel, paragraph 24 (page 689) and paragraph 26 are good illustrations There are a number of very good illustrations here. It is only for the sake of time I have not read them all. Paragraph 24 relates to a lineman named Jai Singh who was serving in the Telegraph Department of Sutna, in the Rewa State The Darbar, suspecting him of having received some stolen property, caused a police search to be made in his house The Political Agent (No 306/420/15, dated 25th January, 1916), perhaps on some misrepresentation, objected to the search being made, and asked for the particulars of the case. The Durbar, while supplying the necessary information (No. 2038/170 P.O , dated 24th February, 1916), thought that there were no rules "which preclude the authorities of the State from searching a house in such circumstances, except through the Postmaster" and they held that "in this respect a British subject or servant is treated in the same manner as a State servant." The Political Agent (No. 938/420/15, dated 10th March, 1916), however, refused to admit this, and insisted that even a search in the house of a Government servant must invariably be made after making a prior reference to the Agency The Durbar (No 2539, dated 29th March, 1916), in a well-reasoned communication, refuted the arguments of the Political Agent, and held that in the matter of conducting police investigations, the need of a prior reference to the Political Agent was not essential. It is significant to note that the Durbar received no reply to their last communication on this subject.

Then from paragraph 26 you will see that as late as in 1927 another matter in which the Durbar think the Political Agent interfered unreasonably was the trial of one M. Ghazan, who was a servant of the Rewa Durbar in their Settlement Department for five years. He was accused of bribery and corruption and was eventually convicted in the Durbar's Courts. He and his relatives represented the case (without the previous knowledge of the Durbar) to the Political Agent and to other officers of the Government of India. They were successful in gaining the ear of the Political Agent, who thought fit to remind the Durbar (16th August, 1927) of "certain instructions of Government of India" which provide that "when a British Indian subject

is under trial in a Durbar Court there is a right to representation to the Political Agent who should not, however, interfere save in special circumstances." What those "special circumstances" were in the trial of M. Ghazan was never made clear to the Durbar. Still, the paternal interest taken by the Political Agent in M. Ghazan carried him, perhaps, too far. The extent to which M Ghazan, an ordinary servant of the Durbar, convicted of bribery and corruption, had succeeded in creating on the Political Agent the impression that the Durbar were actuated by partial motives in convicting him may well be imagined from an account of an interview which the Political Agent had with His Highness the Maharaja Saheb Bahadur and his Adviser and Secretary. Well, Sir, the interview is there (Political Agent's Memorandum—undated); I am not going to trouble to go into it in detail.

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of such arrest, but that he should be handed over forthwith to the nearest military authority. With reference to (d) the words 'an offence committed by him in that State on some previous occasion' [paragraph 2 (ii) *supra*] may be interpreted in their broadest sense, the meaning of the phrase not being restricted to offences committed while on leave. The jurisdiction of the Native State Courts will not, however, extend to the case of a native soldier who has been charged with an offence previously committed while on duty, and who has already been tried and either acquitted or punished by the British authority for such offence. As regards (e) I am to say that the Government of India are prepared to waive the restriction imposed by the words 'provided that the offence so committed is one of those entered in the schedule to the Indian Extradition Act' [paragraph 2 (ii) *supra*]."*

The first comment on that letter is, that as regards the Mysore Durbar, Government might very well have power to make any such order because the Mysore State was created by the Government of India and received its powers with whatever terms the Government of India chose to make. That is so, both as regards the original Treaty of 1799 and as regards the Rendition of 1881, and the Mysore Durbar therefore is obliged to obey orders. But to attempt to apply the Mysore analogy to a full powered State which is not subject to those orders is a very different proposition. If the Committee want it, I can give references to the articles of the two Treaties

Chairman: No, it is not necessary.

Sir Leslie Scott. The second observation that I make there is this. According to the ordinary rules of International Law, as recognised by British Courts, and I think generally recognised by the Courts of all nations, the immunity from local jurisdiction which attaches to military persons appertains to the unit to which those persons belong and does not extend to the persons in their individual capacity. Of course, where an army is in a hostile country, the question does not arise at all, it arises only where there is an army or a force in another country by the consent of that country, and the rule there is, that that army is usually supposed to retain its own exclusive jurisdiction over its own personnel in so far as that personnel belongs to it. That general principle, of course, the States do not want to dispute It is unnecessary to go into it in detail, but in the Indian States there are many occasions where there are individual members of the British Indian Army who are very often their own subjects, the subjects of the States themselves, present in the States, engaged on duties, but not attached to such a foreign military unit as would bring the case within the ordinary rule as recognised by International Law, and the result of the States not being allowed to exercise their jurisdiction for ordinary criminal purposes over persons in that category is sometimes very inconvenient indeed as regards trial and everything else, and it is a matter to which they attach the greatest importance, as you will see in the correspondence with the State of Patiala.

* Copy of this letter forwarded to the Foreign Minister, Patiala, by the Political Agent (Letter No 3897, V. dated 20th May 1905).

Then, Sir (page 666), the Patiala answer, Exhibit B (No 1366, dated 21st September, 1906): "With reference to your vernacular endorsement, No 3897, dated the 20th May, 1905, forwarding for information and guidance of the Durbar a copy of letter (No 1389—I.A., dated the 18th April, 1905) . I have the honour to inform you that the papers in original were submitted to the Council of Regency for orders. In reply I am directed to inform you that according to the 'Sanad by way of Treaty of 5th May, 1860' the State has jurisdiction to try and punish all persons including British subjects committing crime and apprehended within the territory of the Patiala State. But the ruling laid down in clause (c) of the letter under reply runs counter to the good intention of the British Government expressed in the said Sanad It is evident from the letter under reference that the sepoy of a Native Army, while not on leave, is considered a British subject It is, therefore, apprehended that the native sepoys of the low ranks while residing in the State for purpose of recruiting might take advantage of the latitude provided by this clause, and with impunity commit offences within the territory of the State If such persons be not apprehended and punished it might interfere with public safety and the good government of the State The Durbar therefore hope that the new restrictions which really concern the Mysore Durbar would not be made applicable in the case of Phulkian States and the existing procedure which is in accordance with ancient practice and the Sanad of 1860 would be allowed to continue" Now, you see that letter is written in 1906 Down to that time there had been no attempt to enforce this rule about jurisdiction, and that assertion that it was the existing procedure is not in any way contradicted by Government, they do not challenge its correctness, and, as you will see, indeed they accept it. Clause IV of the Sanad, which is in Aitchison, Volume VIII, is at page 203 Jind has the same Sanad There had been certain limitations on the power of capital punishment up to then under the Treaty of 1847, but Clause IV goes on "That is now cancelled, and absolute power by all means regarding the infliction of capital punishment, etc, in his territory, according to old custom, is granted to the Maharaja Sahib Mahindar Bahadur and his successors Similarly with regard to punishing subjects of the powerful British Government, committing crime and apprehended in the territory of the Patiala State, the Maharaja Sahib Mahindar Bahadur and his successors are granted power in accordance with the provisions of the Despatch No 3, dated 1st June, 1836"—which you will find quoted in the Jind case (page 635)—"British subjects apprehended in the territory within which the offence is urged to have been committed are amenable to the jurisdiction of the Tribunals established there" The importance of that, Sir, is this, that that rule is contained in a letter from the Court of Directors of 1836 It does not purport to record any particular concession, it merely states the existing position, that Patiala has power to apprehend and try and punish British subjects apprehended within the territory, and it says "British subjects" without any qualification, and that includes European British subjects as well as Indian British subjects. Now, that is the position and Patiala relies upon that in this letter that I have just read of the 21st September, 1906 Then (page 668), Exhibit E, is

the next one I am going to read. That is a letter (from the Political Agent, No. 3651, dated 19th April, 1910) enclosing an earlier letter of 1898. Would you mind reading first the one of the 12th July, 1898? *(No. 570, from the Chief Secretary to the Punjab Government,* to the Motamids, Patiala, Bahawalpur, Jind and Nabha States). "The Government of India desire that early and accurate information may be supplied to the British Military Authorities of any criminal proceedings taken in Native States against enrolled and attested followers of Her Majesty's Army. I am accordingly directed by the Lieutenant Governor to ask you to request the Durbar to take such steps as to ensure that whenever an enrolled follower is arrested under the order of any Court in the Bahawalpur, Patiala, Jind and Nabha States, prompt information is supplied to the local Military Authorities, and a further report is submitted in the event of such arrest resulting in conviction." So that you see as regards followers, that practice was recognised by the Government in 1898 Then Exhibit E is the letter which encloses the one I have just read: "I am directed to refer to the letter No. 570, dated 12th July, 1898, . . . a copy of which is enclosed for reference. (2) The Military Authorities desire that the instructions therein contained shall also be made applicable in cases where criminal proceedings are taken by the Authorities of a Native State against a combatant. I am, therefore, to request that similar information may be furnished in the case of the arrest of Native officers and soldiers of the Indian Army, except in those cases where existing rules require the offender to be handed over to the nearest Military Authority." That is 1910 So that the statement made in the Patiala letter of 1906, which I read just now, about the existing procedure being in accordance with ancient practice, is borne out by these letters

Then Exhibit F (page 669), the Political Agent writes (No. 1758 C, dated 25th August, 1911): "With reference to correspondence ending with your letter No. 800, dated 20th September, 1910, in which your Durbar have agreed to the request of the Government of India, regarding the supply of information to the Local Military Authorities of the arrest of Native officers and soldiers of the Indian Army by the Authorities of the State, I have the honour to ask whether your Durbar wish reciprocity in this matter." That *is absolutely the right attitude, in my submission, for the Govern*ment to take up. Both sides are willing to supply each other with information, and there is no dispute of the jurisdiction of the State Then the next one that I want to read is the letter of the 8th January, 1923, Exhibit H (page 670) (No. 3 J—168, from the Secretary to the A.G G, Punjab States): "I am directed to communicate, for the information of the Durbar, the orders passed by the Government of India on a reference from the Nabha State regarding cases of the nature referred to above"—that is offences committed by Indian Officers and soldiers of the Indian Army in Native States—"2 The general principles to be followed in such cases were laid down in the Resolution No 1389, I.A , dated 18th April, 1905, a copy of which was forwarded to the Durbar with endorsement No. 1451, dated 14th September, 1906, from the Political Agent, Phulkian States A protest was made at the time by all the Phulkian States that the procedure laid down in this resolution was an infringement of Clause 4

of the Sanads granted to them by Lord Canning in 1860; but no action was taken at the time, apparently because it was thought better to wait until some concrete case arose "—You will observe the lapse of time is 18 years.—" 3 A case having recently occurred in the Nabha State a reference was made to the Government of India, and orders were solicited on the following points · (i) whether the claim of the Phulkian States to exemption from the orders conveyed in letter No. 1389 I.A , dated 18th April, 1905, was admissible, and (ii) as to the procedure to be adopted in the case of a Sepoy, while not on leave, being arrested in an Indian State for an offence committed previously when on leave, or when absent without leave. 4. As regards the first point, the claim to exemption is based partly on past practice and partly on the interpretation of the Sanad As regards past practice, the Government of India have observed that, as far as they were aware, there was only one case in which they had agreed to a soldier of the Indian Army being made over for trial by the State Courts for an offence committed in State territory Even in that case, whatever the reasons which had led the Government to grant the concession, they had nevertheless insisted on the maintenance of the general principle that Durbar Courts have no jurisdiction over officers and soldiers of the Indian Army "—In my submission that view was wrong, and there is no question of concession —" As regards the interpretation of the Sanad of 1860, the Government of India have stated that they cannot admit that Clause 4 gives the Durbars jurisdiction The clause clearly has reference only to ordinary British Indian subjects, that is, private individuals in ordinary circumstances Soldiers of the Indian Army who commit an offence in Native State territory, while on duty, are amenable only to the jurisdiction of the Tribunals (Civil or Military) of British India, except to the extent permitted by paragraph 3 of the Foreign Department letter No. 1389 I.A , dated 18th April, 1905. This rule applies to all soldiers of the Indian Army, whether they are or are not British Indian subjects "—That is to say, including subjects of the very State where the offence is committed I respectfully submit that that is all wrong and contrary to the practice which had been the rule, contrary to the interpretation of the Sanad, contrary to International Law, and contrary to the agreement between the State and the Crown

The next letter that I want to read is in the Jind file—it is not in the Patiala one—(page 636), Exhibit E (No 190, dated 18th April, 1925, from the Political Secretary, Jind State, to the A G G , Punjab States). There are just two paragraphs in it I want to read The third paragraph is " Past practice has also strengthened the Durbar's interpretation "—that is of the Sanad—" inasmuch as this jurisdiction has been uniformly exercised whenever an occasion has arisen This was done in the case of Jamadar Ram Singh of the 7th Bengal Lancers in 1903 He was passing through this State with his unit, when he committed an offence in the State territory, for which he was tried here I am also to explain that the jurisdiction to try an offence is regarded by jurists as belonging to the place where it has been committed In the case of Europeans, however, the Statute has made an exception "—The Jind State is accepting its bad law from the Indian Government The Statute cannot make an exception—" I am to mention that if a departure from the right interpretation of the

Sanad is decided upon, the Durbar would be justified in requesting the Government of India to grant a reciprocal treatment in the case of the officers and soldiers of the State Army, that is, the State alone may have jurisdiction over them in cases where they commit offences in British India." Of course, that is a perfectly logical corollary. Then there is an extremely important letter, Exhibit J, No 3J/1842, dated 9th March, 1927, from the Secretary to the A.G.G. to the Political Secretary, Jind State: "I am directed to invite a reference to the correspondence ending with your letter No. 408, dated the 7th August, 1925, on the above subject."—That is stated in the heading as 'Procedure in cases where Indian officers and soldiers of the Indian Army commit offences in Indian States.'—"2. The Government of India have fully considered the representation of the Jind Durbar but regret that they are unable to modify the orders already passed The Durbar's claims may be summarised as follows: (a) That the Sanad of 1860 gives them full jurisdiction over all offenders, including soldiers of the Indian Army; (b) that they have uniformly exercised such jurisdiction; (c) that it is a principle of law that offences should be tried at the place where they are committed; and (d) that the Government should reciprocate with them in the matter and allow them exclusive jurisdiction over soldiers of the State Army who may commit offences in British India. 3. As regards point (a)"—that is the Sanad—"the Government of India have fully considered the question of the correct interpretation of the Sanad of 1860. They cannot admit that Clause 4 confers on the Durbar jurisdiction over officers and soldiers of the Indian Army, as it clearly has reference only to ordinary British Indian subjects (that is, private individuals in ordinary circumstances)."—*I think the "clearly"* is rather brave—"The vast majority of writers on International Law hold that if a soldier of any country goes to a foreign territory on duty and commits a crime there, he cannot be punished by the local civil or military authorities, but only by the Commanding Officer of the Forces or by other authorities of the Home State."—That is a misconception of the rule I think.—"The principles of International Law do not regulate the relations of the Government of India with the Indian States, because the former are in the position of a *suzerain* power. It follows *a fortiori* that if a soldier of the suzerain power goes on duty to the territory of a State under its suzerainty he is not, in the absence of a specific grant of jurisdiction, liable to be tried by that State for any offence committed within its territory."—That is simply bad law in my submission.—"The Government of India are unable to accept the claim that the Sanad of 1860 was intended to grant to the Durbar jurisdiction in this exceptional class of cases The fourth clause *of that Sanad confers on the Ruler of* Jind 'absolute power by all means regarding the infliction of capital punishment, etc, in his territory' and then goes on to say, 'similarly with regard to punishing subjects of the powerful British Government committing crime and apprehended in the territory of the Jind State.' This clause clearly confers upon the Durbar jurisdiction to try British subjects in ordinary circumstances only, and cannot, in the absence of any reference to sepoys, be regarded as derogating in any way from *the right of the suzerain power to which reference has been made* above."—My submission is, that the suzerain power has no such right,

and that, secondly, the Sanad is perfectly clear on the point. Then paragraph 5 is this: "As regards point (c)"—that is local venue for offences—" this principle has no application in the case of offences committed by soldiers on duty in foreign territory, or, if such offences are tried locally, they must, unless the jurisdiction is waived, be tried by an authority of the Government in whose service they are. Point (c) is in fact covered by the reply in paragraph 3 in regard to point (a) which shows that (as a matter of international law) offences in foreign countries are triable by the authorities of the home State."—The next two sentences are very important, in my submission—"The juridical principle that an offence should be tried at the place where it is committed is, of course, well recognised, but, as the Durbar themselves admit, it is subject to exceptions."—The Durbar only said it was subject to exception by agreement—" Thus every British subject carries with him as his personal law certain enactments of the Government of India, even when he passes beyond the limits of British India, and he can be tried before a British Court for a criminal offence committed in a State."—That is simply the fallacy of thinking that the provisions of the Indian Penal Code and the Indian Code of Criminal Procedure, which confer on British Indian Courts a kind of personal jurisdiction over British subjects, have anything whatever to do with the ousting of the State jurisdiction The one has nothing whatever to do with the other —" 6 As regards point (d), it will be clear from what has been said above that no question of reciprocity arises. . . ." That is the way in which the Government dealt with the subject. I do not think I need read any more of the Patiala letters, except one or two

On page 684, Exhibit J (Letter No. IX—371/17—1983, dated 26th June, 1926, to Secretary to the A.G G., Punjab States), the Patiala Durbar put their case very clearly. On page 685, Exhibit K, (Letter No. 3J—8722/13/49/26, dated 30th November, 1926, from Secretary to the A G.G , to the Foreign Secretary, Patiala), the Government put forward the claim boldly on the basis of the prerogative of the paramount power. It is in the first sentence of that letter. " The Government of India have always maintained their right to exercise jurisdiction over European British subjects in Indian States "—not merely soldiers, it is quite general—" and have always insisted that that right is the prerogative of the paramount power At the same time, the rule is not so rigid and invariable as to admit of no exceptions. The Government of India have in fact recognised that exceptions should be allowed in certain cases. Thus, subject to the proviso that it is for the Government of India to decide which jurisdiction shall be exercised, they are ordinarily content, in criminal cases, when the criminality involved is trivial or merely technical, that the trial should be left in the hands of the State Courts . . " That is all I am going to read there, Sir. You see it is brought to a clear issue between the two sides.

Before I leave the Patiala case I ought to point out to you that in fact the Government of India in the end has given way On page 675, Exhibit L (Letter No. 3J—1843/13/4/22, dated 9th March, 1927, from the Secretary to the A.G.G., Punjab States, to the Foreign Minister, Patiala) you will see: " But it must be understood that the concession may be withdrawn at any time for what may appear to the

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Government of India adequate reason." I did not read it because there was no concession of the principle. That is the only reason I did not read it. As you know, Sir, of course, the Government of India ask for all the States to allow recruiting in their State territory, a large number of recruits come from the States and enlist in the British Indian Army, and then very often are sent for service in the States. Consequently this question as regards soldiers, the smaller and narrower question, is a very important one. It affects the question of recruiting obviously very directly.

The next one, Sir, is the Jodhpur case (page 639). With one additional point, it is the same as the Patiala and Jind cases At the bottom of page 640 I want to call your attention to one letter No. 313.S, dated the 25th September, 1913 This is a letter from the Officer Commanding, 43rd Erinpura Regiment, to the Resident, Western Rajputana States: "As it is laid down (Indian Army Act, Section 41) that all charges against Indian soldiers of crimes committed beyond British India must be tried by the Commanding Officer and also under rule 14 (page 175, Indian Army Act Rules), 48 hours is the general limit for custody prior to investigation, it will be as well to draw the attention of Sirohi and Marwar Durbars to the law and request them to issue orders that in all cases of complaints against Indian soldiers, a report, together with the necessary witnesses, should at once be sent to the Commanding Officer, who alone determines how the case is to be disposed of (Indian Army Act Rules, No. 15, page 177, Note (c))."

You see there how these loose habits of dealing with questions of right and obligation lead to misapprehension as to the power of the Government of India and of the Army to give orders generally in the States That kind of mental attitude is very damaging to the authority of the Sovereign of a State within his own territory; the feeling in the State amongst the subjects that orders can be given which the Maharaja has got to obey, that there is a higher power even within the territory for internal purposes that can give orders to the Durbar, is destructive of all real good government That is what the States feel very much.

Now, Sir, the next one that I take is the Kashmir case (page 641). This is a very interesting case, because it brings out the legal questions so simply and clearly. I shall make a short statement first: as you remember, the treaty with Kashmir which brought Kashmir into the possession of the Ruler of Jammu was the treaty of 1846. Under that treaty the Ruler of Jammu is a complete sovereign within his territory, subject to very small qualifications. There is a condition about the employment of Europeans, but the limitations upon his sovereignty are very small. He has complete jurisdiction within his territory over everybody for all purposes—just as complete as (to refer to my previous analogy) France In 1870 a treaty was made in order to facilitate trade between India and Central Asia coming through Kashmir, as you remember That is in Aitchison, Vol XI, page 272. In order to facilitate the arrangements then made, the treaty provided two things: for the appointment of a Commissioner representing Great Britain, the Indian Government, and a Commissioner representing Kashmir, who should be Commissioners over the treaty

road. They had certain jurisdiction given to them over the road and *the serais alongside the road; a very limited territorial jurisdiction* In addition, an arrangement was made for rules being made by agreement between the State of Kashmir and the Government of India, and in accordance with the treaty, rules were framed in 1873 which you will find in Aitchison, Vol XI, page 274, and they are set out in Exhibit A here (page 643) It is important to realise that these were made in fact by agreement between the State and the Crown, and therefore, in so far as jurisdiction is given to the Government of India, it is properly ceded by the State

Now let us look closely at what the jurisdiction was, because in *1891, without any agreement at all by the State or with the State,* the Government of India purported to issue a totally new set of rules creating a totally new jurisdiction and cancelling this agreed jurisdiction without consulting the State at all "The British officer for the time being on duty at Srinagar shall represent the British Government in Kashmir"—there was no Resident at that time, no Resident was appointed until 1885 on the death of the then Maharaja—"and *for the maintenance of good order the following* powers and duties are respectively conferred and imposed upon him (a) He may direct any European British subject who is travelling or residing in Kashmir, and who is guilty of any gross misconduct, to leave Kashmir forthwith, and may punish any person, knowing of such direction and disobeying the same, with rigorous or simple imprisonment for a term which may extend to six months, or with a fine which may extend to one thousand rupees, or with both (b) He shall receive, try, and determine in his Court (which shall be called 'The Court of the British Officer in Kashmir') all suits of a civil nature between European subjects or between European British subjects and their servants, provided (1) That the right to sue has arisen, or the defendant at the time of the commencement of the suit dwells, or carries on business, or personally works for gain, within Kashmir, (2) That the suit is not of the same nature as those suits of which the cognizance by the ordinary Civil Court of British India is barred by law. (c) He shall have the powers of a Magistrate of the first class as described in Section 20 of the Code of Criminal Procedure (Act X of 1872) for the trial of offences committed by European British subjects or by Native British subjects, being servants of European British subjects." So that the jurisdiction you see conferred there was very limited, it was limited to civil jurisdiction over European British subjects, or over them *and their servants*, and *criminal, over European British,* or native British subjects being their servants There are limitations about the powers; I do not trouble about them at all. There is provision as to the law that was to be applied and the procedure that was to be applied in the rules that follow. The procedure is in paragraph 5 of the rules, the law is the law of the Punjab, paragraph 7 of the rules. Then there is a provision in paragraph 10 for the statement of any question of law for the Punjab Chief Court. Then in addition there was a mixed Court created civil suits between European British subjects or their ser not being subjects of the Maharaja on the one side and subj His Highness the Maharaja on the other That was to be co as you see in paragraph 12 of the Rules, of the British office

the British officer on special duty in Kashmir—and the Civil Judge of Srinagar, or other officer, especially appointed by the Maharaja. Then if they cannot come to a final decision, they are to refer their differences to a single arbitrator (paragraph 13 of the Rules). That is the jurisdiction that obtained in Kashmir by consent of the Maharaja from 1873 to 1891, but before 1891, as you will remember, the Government of British India had intervened, claiming that the then Maharaja had been guilty of mal-administration of the State, and they imposed upon him a British administration, with a Council of State under the Residency for all practical purposes. It was under the Residency in this sense, that the Resident controlled it entirely, and that it had to obey the orders of the Resident. I am quoting from Aitchison from memory (Vol. XI, page 254) That took place in 1889. Then in 1891, when the State was, in effect, being administered under the orders of the Resident, who had taken the place, as I told you, in 1885, of an officer on special duties, the Government thought fit to introduce a totally new system, a system conferring upon the Resident and his assistants judicial powers of a very extended order and that jurisdiction so started in 1891 has continued to the present day. The Princes for whom I appear submit that that departure in 1891 was entirely without any legal basis at all; that the Government had no right to do it, that it was a breach of the Treaty with Kashmir; that it was a breach of the duty of the Government, because Kashmir was under their administration at the time, and they had no right, therefore, to alter the position of Kashmir when Kashmir was not in a position to exercise a free discretion as to whether it would accept or not; and further, that the documents by which the Government purported to carry it out were, as documents, wholly ineffective to carry out what the Government intended I regard that as quite a minor aspect, because the Government, in fact, did it, and whether the documents on which they purported to do it professed to do it or did not profess to do it appears to me a comparatively unimportant matter, because in any event, I contend, that they had no right to do it. These are the points that arise about it, and I want, therefore, the attention of the Committee to the matter, because I am sure the Committee will appreciate that this is a very good illustration for the purpose of raising the question.

Would the Committee mind turning to page 253, Volume XI of Aitchison. It deals with the 1870 Treaty with the State, which I have just told you about. Then it goes on: " In 1872 rules were made by the Government of India, with the consent of the Maharaja, for regulating the powers of the British Officer at Srinagar in respect of civil and criminal cases. . . . . . . These rules were superseded in 1891, when the Resident and his assistants were invested with the necessary powers for enquiring into and trying criminal cases against European British subjects and certain others They have been invested also with powers to dispose of civil suits in which both parties are British subjects or in which the Defendant is a European British subject or a Native Indian subject of His Majesty not ordinarily dwelling or carrying on business, or personally working for gain, within the territories of the Maharaja. The Mixed Court established in 1872, which had not worked well, was at the same time abolished."

You will see a reference there that the Maharaja has not voluntarily resigned all active participation in the Government of his State, and it goes on. "It was stipulated that though the Council should exercise full powers, they were to take no important step without consulting the Resident and were to be guided generally by his advice. In November, 1891, the Maharaja was restored at his own request to a portion of his powers. The Council which had on the whole worked satisfactorily was continued with the Maharaja as President. The condition requiring the Durbar to be guided by the Resident's advice was maintained with the Maharaja's full concurrence. In October, 1905, the Maharaja was entrusted with a greater measure of administrative responsibility; the State Council was abolished, its administrative powers being transferred to the Maharaja, subject to conditions which left the practical control of the Resident unimpaired" That is the point I want to draw attention to. It is not necessary for this case to discuss the accuracy of the statements contained in the paragraph about the late Maharaja and I do not want to raise that question to-day, but I merely put it on record that I must not be taken as accepting the complete accuracy of all these statements But as regards the control of the Resident continuing unimpaired I do accept that because it was a fact

Now (page 645) you will find a letter from a Colonel Prideaux, the Resident at that time in Kashmir (Letter No 1098 dated 27th April, 1891, to the President, State Council) "I am directed by His Excellency the Viceroy and Governor-General in Council to communicate for the information of the Kashmir State Council the following observations regarding the arrangements which the Government of India consider necessary for the exercise of criminal and civil jurisdiction within the territories of His Highness the Maharaja of Jammu and Kashmir"—You notice the same policy here as I drew attention to in the Patiala and Jind cases on this question of personal jurisdiction "2. The Government of India consider that the regulations published with the assent of H
Department Notification No
entirely suited to the presen
regulations considerable changes have been effected within His Highness' territories, and year by year the number of persons visiting Kashmir increases and the opening of the Jhelum Valley road will doubtless attract more and more British capital into the valley of Kashmir On the other hand the Government of India are glad to notice that there has been considerable improvement of late in the machinery for the administration of justice in Jammu and Kashmir, and that if the State Council continue to devote attention to the important question, it is believed that the Courts of the State will in time command the confidence of the general public 3 Inasmuch as the Governor-General in Council possesses full personal jurisdiction over subjects of Her Majesty who may happen to be within the territories of His Highness the Maharaja, it would not ordinarily be necessary to pause before issuing such orders concerning them as might appear from time to time to be necessary. But the existing Regulations having been published with the assent of the late Maharaja and, therefore, out of courtesy to His Highness the present Maharaja and the Kashmir

State Council, the Government of India have desired me to communicate to the Council their intention of making alterations, suitable to the existing conditions in the present procedure." Now, Sir, that letter, of course, did not purport of itself to create any change, because it said the changes would be embodied in the accompanying Notification, but I venture to submit that it was a most improper letter to write. There was an agreed jurisdiction in existence pursuant to a Treaty. Without consultation the Government of India by a stroke of the pen says: "I abolish the Mixed Court, I cancel the arrangements, and *I am going to do this, and you take my orders" I respectfully* submit, Sir, that that was not within the power of Government. Now, just look for a moment at the Draft Notification. I call your attention to the point which, frankly, I regard as a minor point, and that is, that on its interpretation—Professor Holdsworth will no doubt be able to assist us upon that—it did not do any of the things that the Resident said were going to be done It made no changes. "1. In exercise of the powers conferred by Section 6 of the Foreign Jurisdiction and Extradition Act, 1879, the Governor-General in Council is pleased: (a) To appoint every Officer for the time being holding the office of Resident in Kashmir, or of Assistant to the Resident in Kashmir, being a European British subject, to be a Justice of the Peace within the Territories of His Highness the Maharaja of Jammu and Kashmir and (b) to direct that Justices of the Peace within the said Territories shall commit for trial to the Chief Court of the Punjab." Those are merely appointments. "2. Whereas the Governor-General in Council has in certain cases"—this is the point—"Jurisdiction within the Territory of His Highness the Maharaja of Jammu and Kashmir; in exercise of this Jurisdiction and of the powers conferred by Sections 4 and 5 of the Foreign Jurisdiction and Extradition Act, 1879, and of all other powers enabling him in this *behalf, the Governor-General in Council is pleased to issue the following* orders with respect to such cases." I just pause to make a point. As you know, it was laid down by the Privy Council in the Hyderabad case that the stream—that is, the Notification—cannot rise any higher than its source—that is, the cession of jurisdiction from the Sovereign to the State. So here the Governor-General in Council possesses no jurisdiction except what has been conceded to him by the Agreement made in 1873 and embodied in the Rules of 1873. That was the only *jurisdiction he possessed, and therefore in exercise of that jurisdiction* he has no power to enlarge it. Consequently, the whole of this document simply did nothing in any legal sense. It is a very clear point to a lawyer, and rather an odd one.

Professor Holdsworth. You would not say that "all other powers enabling him" had any force at all?

Sir Leslie Scott: It must be consent There is no other power in question

Professor Holdsworth: I thought you said that during this period special regulations had been made by the Government of the State in 1889.

Sir Leslie Scott: Oh! of course, if you say that the Government of India was at this time in charge of the administration and that, as

a purely temporary measure, it was making some alterations of the kind, I agree with you, but that would depend on what powers it had acquired for the purpose of controlling the administration of the State pursuant to what Aitchison describes as the resignation from some of his powers of the Maharaja

Professor Holdsworth: Would not that be "all other powers enabling him"? Could it not be brought in under that?

Sir Leslie Scott: Certainly, I entirely agree, if it is limited to that purpose, then those words "all other powers" might refer to that. What those powers would be would, of course, depend on what powers were acquired under the arrangement made between the Government and the Maharaja at that time, or on whatever powers the Crown might have possessed as Paramount Power analogous to the powers of dispossession. But I do not think the Crown was seeking to exercise any of its powers of paramountcy I think that what was done—I am speaking only according to Aitchison—seems to have been done by arrangement with the Maharaja

Professor Holdsworth That may be I was only trying to find some meaning in this Draft Notification You said it had no meaning I think it ought to be presumed

Sir Leslie Scott I was wrong in saying that The reason I said that was this. that they have continued to apply the Code that they started in 1891 up to the present day and to treat it as a permanent matter, and so regarded, there were no powers which could come within those words "all other powers" You see, the power to administer the State for the purpose of, let us assume, restoring order, is essentially a temporary power that exhausts itself when the purpose of the power has been achieved When order has been restored within the meaning of that expression, then the power lapses automatically, and the Government of India, intervening in a State in order to restore order, must go out as soon as order is restored

Professor Holdsworth It could not, you think, make any conditions for the future conduct of the State so as to ensure that another crisis should not arise; so that, as a condition of giving back the power which had been taken, the position of the Ruler might be slightly modified

Sir Leslie Scott: I will come to that question when I address the Committee I know of no such power as that and—I will not argue it now—I think there are very strong reasons against it It is a matter I have considered, and I will address an argument to you The ordinary form of Order under the Foreign Jurisdiction Act recites these words always.

Professor Holdsworth: I know it recites those words but I think it is very wise in reciting those words. It probably means it has been given them

Sir Leslie Scott: You probably know, Sir, that this question has been discussed and I summarise my submission on that at this ' by saying that, apart from any temporary powers of r ' ' there is, I submit, no power except consent which can enable '

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purposes. A few illustrations are given (pages 650 and 651). A man says that he has had difficulty in obtaining coolies and supplies, and he could not get the eggs he wanted, so he writes (letter dated 17th September, 1926, from Lieut. R. J. Haworth, R.A.S.C., c/o Postmaster, Islamabad), to the Resident in order that the Resident may take the matter up with the Darbar. As he says in the last line: "I should be very glad if this matter could be taken up and suitably adjusted". I suppose by that it is intended that due reproof should be administered to the Darbar. The letter at the bottom of page 651 is another. A gentleman writes (letter dated 29th October, 1927, from Lieut -Col F. B. Lane, Headquarters, Hodson's Horse, Lahore Cantonment), saying that he and his wife have just returned from marching down the Poonch River, and that the Zaildar of a certain village gave him no assistance. That letter is sent on, by the Second Assistant to the Resident to the Darbar, Exhibit L. (No 5283, dated 12th November, 1927): "I am directed to forward for favour of such action as may be deemed necessary a copy of a letter from Lieut -Col F. B. Lane, dated 29th October, 1927. It is requested that this Residency may kindly be informed in due course of the action taken." They are trivial things in themselves; but these things are continually happening, and the net result of it is that the sovereignty of the Ruler of Kashmir is prejudiced for the purposes of good government by the impression that gets abroad in the State of Kashmir that there is a higher authority than himself in Kashmir to give orders. That state of things, I venture to submit, is one that ought not to be allowed to exist I leave, therefore, the case of the State of Kashmir with the simple submission that the changes of jurisdiction made in 1891 were made without any right, and that steps ought to be taken at once to withdraw them Whether the agreement represented by the Rules of 1873, which was repudiated by the Government of India in 1891, can be treated by the Government of India as now binding, is another matter. My submission is that that agreement must be treated as having been brought to an end by what was done in 1891, and that, anyhow, in any event, it was an arrangement subject to termination upon notice by the State.

The next case I want to take is the case of Nawanagar (page 652). The State claims the complete internal independence of the first-class States of Kathiawar, as established by Colonel Walker. You are familiar with that. The first point raised here is the introduction in 1866 of the classification of the jurisdictional powers of the States by circular. I think it was begun, if I remember rightly, in 1857. This circular laid down that first-class States of Kathiawar were competent to "try any person except a British subject for capital offence without permission from the Political Agent." The exemption of British subjects from the jurisdiction of the Nawanagar State was a serious interference in the internal autonomy of the State, in clear violation of the rights guaranteed by the British Government. But the operation of this rule did not end here; in practice it was carried so far that when a British Indian subject, after committing an ordinary offence in a State having jurisdiction over him, escaped into British territory, he was not surrendered to the State for trial but his trial was held by the Agency Courts. So that you see that means, in effect, that under the extradition arrangements between Nawanagar and the

Government of India, if a British Indian subject committed an offence in Nawanagar, although by the classification of the States of 1866, Nawanagar was allowed to try that case, the British Indian Government refuse to hand him over. As you remember, probably, that is repeated in the Extradition Act of 1903 by a section of that Act, and in Section 188 of the Criminal Procedure Code. Then, in 1910, the Kathiawar States lodged a formal protest. Here are the grounds of their protest. (1) That there was no substantive law precluding the trial by Indian States of British Indian subjects, (2) that in Section 7 of the Indian Extradition Act no reservation is made for British Indian subjects as is done in the case of European-British subjects; (3) that the rule that the supply of *prima facie* "proof is a condition precedent to the surrender of a fugitive criminal afforded sufficient protection to British Indian subjects, and (4) that the Circular of 1866 does not confer on the Government of India the right to refuse the surrender of British Indian subjects charged with offences other than capital." That is Exhibit "B" (letter dated 19th May, 1910, to the Governor in Kathiawar), and it is a well argued exhibit The third paragraph is the important part, but I do not think it is necessary to read it in detail The reply of the Government is dated 6th June, 1910, from the P A A.G, and the States are informed "that the matter was previously referred to the Government by A G, and that for the present, and until another opportunity arises, the A G does not propose to approach the Government again" Then that was repeated in 1916 (letter dated 13th January, 1916, to the A G G., Kathiawar), a similar representation, and again the similar reply (No J/84, dated 8th March, 1916): the Government could not move in the matter It was repeated in 1922 (letter dated 22nd August, 1922, to the A G G, Kathiawar), when the answer (No. J/60 (24)—no date quoted) was that: "the Government has been pleased to agree with the A G.K that British Indian subjects who have committed offences in State Territories and taken refuge in British India should be surrendered to them for trial by their Courts" So that as regards British Indians finally they establish their position

Then there is a similar question of jurisdiction to that raised in the Patiala case about soldiers, but in this case it is about Police There is another grievance of a similar character which still remains to be redressed. In 1881 a resolution was issued by the Bombay Government that a member of the Police Force maintained by the Kathiawar Agency would not be amenable to the jurisdiction of the State I will not go into the details because you can see exactly the sort of point that it is, but the Nawanagar State and a number of other States sent in a general representation which you will see (Exhibit H) on page 659 (dated 29th September, 1911), the answer being (page 660), Exhibit I (No Ver./2137, dated 28th November, 1911) " that the orders of Government passed in 1891 and communicated to them through the Prant Officers are still in force, and that they can try Agency Police for summons cases with the previous sanction of the Agent to the Governor, but that they cannot try them for warrant cases" In a letter dated 18th October, 1917, No J 79 from the P A A G, it is stated that: "jurisdiction in criminal matters over the men comprising the Kathiawar Agency Police is reserved to the Agency Courts" Now, Sir, my submission is that in none of those cases is the Government

you find the Sanad (no date quoted). "As a manual of law for the better management of persons residing in the Cantonment Bazars of Gwalior has been compiled and submitted to our august office by Brigadier Parson, Army Commander, through Major Duncan Malcolm, P.A. Gwalior, it is hereby proclaimed for the general information that this law has been sanctioned by the Durbar. The Officers Commanding at the Cantonments are given full powers to promulgate the aims and objects of the said law in respect of persons and cases mentioned therein." There is a letter (dated 26th February, 1853, to the Resident), Exhibit 4 (page 711), saying in the last two lines of it: "Your letter was read to His Highness word by word."

Then you come down to 1865 (Exhibit 5) (Letter dated 6th July, 1865, from the Political Agent to the Dewan of Gwalior); I go straight to that: "With a desire for interview I beg to inform you the Honourable the A.G.G , Central India, in his letter No 834, dated 29th June, 1865, writes to say that it has been proposed by the British Government that all complaints against clerks and managers of the Indian Carrying Company, i.e., bullock trains, which carries on its business on the Agra Bombay Road, will be heard at Agra and no Political Officer will interfere with the same The Honourable the A.G.G. also says that the transactions of this department extend to far-off places and that the subjects of Gwalior State who reside in Goona and beyond that and do transactions with that department, are especially put to great inconvenience if they have to file any suit against the Company's employees He therefore proposes in view of public convenience that an additional *court may be opened at Guna to hear such cases, and wants to know* the views of the State authorities . . ." and then details are forwarded to His Highness the Maharaja. In Exhibit 7 (Letter dated 17th August, 1865, from the Dewan to the Agent, Gwalior) the last two lines say "The powers of the said court should be just as those of the court at Morar proposed and passed long ago" That is not as extensive as the powers that are asked for. Still, as a matter of fact, they did operate the new courts on the extended lines, and not on the narrower lines of the court at Morar, disregarding the limitation imposed by His Highness. They accepted the restricted powers, but in spite of that they extended them.

On page 716 you get this question about the extension. I will read Exhibit 15 first, Sir, because that is earlier in date; it is from the Resident to the Chief Secretary of the Durbar (No 2620, dated 12th April, 1904): "With reference to your letter No. 3384 of 23rd September, 1903, I have the honour to say that the punishment of reduction to constable awarded to the Head Constable Fida Husen, though not severe, is accepted as sufficiently meeting the case. I understand Fida Husen is very young and had only lately been made a Head Constable. 2 For the future I think it would be well that order should be issued to all concerned as to the disposal of cases in which residents of the Goona Cantonment may be implicated. 3. Non-Commissioned Officers and men of the Central India Horse and all regimental followers being Government servants and British subjects are not amenable to the Durbar Courts, and if charged [illegible] within the territories of the Durbar [illegible] e handed over within twenty-four ho[illegible] ssistant, Goona, to be

tried by him." That you see is really the point coming under the last head that we dealt with. "7. Residents of Cantonments, who are not members of the Central India Horse or regimental followers, and who may commit offences in Durbar limits, are amenable to the Durbar Courts, and should be dealt with by the State Police in the usual way." That was subsequently departed from. Now, Sir, Exhibit 14; this is from the Resident to the Chief Secretary (No 187, dated 6th January, 1905). "I have the honour to invite your kind attention to my predecessor's letter (No. 2620, dated 12th April, 1904); whilst agreeing in the main with the principles there laid down by Colonel Herbert, I am of opinion that the views expressed by him in paragraph 7 are incorrect, and in opposition to the orders contained in the Government of India Notification No 367-I.B., dated the 29th January, 1897, as read with paragraphs 4 and 5 of the Central India Agency letter No. 9543, dated 6th December, 1895, to the address of the Secretary to the Government of India in the Foreign Department . . 2 Your attention is particularly invited to paragraph 5 (1) of the latter enclosure, which clearly contemplates the Political Assistant's jurisdiction within the five miles radius over bona fide residents of the Goona Cantonment 3 In substitution, therefore, of paragraph 7 of Colonel Herbert's letter referred to above, I have to request that in all cases where an arrest is effected of a bona fide resident of the Goona Cantonment, within the five miles radius prescribed by the Government, the accused should be sent as soon as practicable, certainly within 24 hours, to the Political Assistant with a brief report from your Principal Civil Officer at Goona City, setting forth the facts of the case and inquiring whether the Political Assistant will dispose of the case himself, or will sanction its trial by the Durbar Officer having jurisdiction in Goona City. If the Political Assistant elects to dispose of the case himself, the Durbar responsibility will then cease; if he cedes his right the accused will then be tried by the Durbar magistrate concerned." Now, Sir, what right was there to extend the radius by five miles? Colonel Herbert was plainly right, in my submission What right was there to pass a Resolution of the Government on the lines indicated in that of January, 1897?

Finally, Sir, the question arose as to the application of British-Indian laws to the Maharaja's territory on various grounds The Durbar thus finding their authority usurped, set an enquiry on foot and found that the following laws had gradually been extended to the Goona Cantonment, which was being treated practically as a part of British territory (1) Notification No 1361, dated 29th March, 1889. (Civil Cause Courts) (2) Introduction of the Indian Penal Code in Goona and Agar Cantonments in 1892 (3) Criminal Notification No. 367 I B, dated 29th January, 1897. (That is the five mile radius one) (4) Criminal Notification No 2631 I B, dated 7th October, 1898

The Durbar were on the point of addressing the Government of India when the evacuation of the Goona Cantonment was decided upon by the Government Now, that is the Gwalior case, taking it very very shortly. The interest of it is that under the Rules of 1853 you see the way in which the matter can be dealt with properly by consent, by the Sovereign of the State himself passing a law constituting the Courts and applying the necessary procedure and substantive law

that is to be observed by the Courts. It is perfectly easy to do it if it is done in that way. It can be done by arrangement within reasonable limits, and you do not have to resort to this curious, vague, gradual extension of jurisdiction which the States are never able to check at any particular point, with the result, of course, that their effective sovereignty within their jurisdiction is very seriously encroached upon.

Colonel Peel: If I may ask a question: How would you distinguish between an agreement of that kind and an agreement which you mentioned just now, induced by illegal pressure?

Sir Leslie Scott: The obvious machinery to prevent the pressure, if I may say so, is to arrange for all those sorts of matters to be dealt with by a body representing the States generally, to which the States delegate authority, to make those kinds of arrangements Then you eliminate the possibility of pressure over an individual State.

Colonel Peel. I was not asking so much about the remedy, as how you distinguish those two cases. In this case you say there is a proper way of doing it.

Sir Leslie Scott: I was assuming it was done with real consent, without any pressure. There is no evidence of pressure in what I read, and I therefore, assumed that the Maharaja had been perfectly willing to do it. If there was pressure it would be open to the criticism, but I was assuming there was none

Colonel Peel: It would not be illegal?

Sir Leslie Scott : If there were no pressure, obviously no.

Colonel Peel: Even if there were pressure?

Sir Leslie Scott: It depends on what you mean by "illegal" Sir. It would not, in my submission, be binding on the State if it was obtained by pressure, because it would not be a real consent. The application of that principle, that an agreement by a person exercising jurisdiction obtained by the pressure of the suzerain is regarded by the Political Department as not binding on the subordinate, is found in a case that we shall come to presently It is a very interesting case because it was a dispute between a State and its own feudatory, in which the Political Department intervened and expressed that principle in terms that could not be improved on.

You will find, Sir, in these cases, Jind (page 638), Jodhpur (page 630), Kashmir (page 641), Nawanagar (page 652), and Rewa (page 687), all Jurisdiction cases under the heading A (a) ii. b., that is to say, jurisdiction over classes of persons, illustrations of extension of British-Indian legislation, and they therefore afford illustrations under this head. That a consent to the exercise of jurisdiction by British-Indian Courts, however constituted, within the territory of the State must imply the right to apply in those Courts some legal provisions both as to procedure and substantive law, I think, is necessarily involved. I imagined Professor Holdsworth would take that view. You must imply some provisions of that sort. The easiest way to avoid trouble is, of course, to agree at the time that the laws are to be applied and arrange about future alterations. That has been done in certain cases. That is really the method applied in 1853 in this Goona Cantonment case

There the Maharaja indicated the types of offences for which he was conferring the jurisdiction at the request of the Cantonments. That a simple cession of jurisdiction as, for instance, in the Railway cases or Civil and Criminal jurisdiction in connection with the Railway, cannot imply an authority to introduce every kind of law, is fairly obvious. Take the case of a man and his wife, both subjects of the State, living within the Railway limits and employed by the Railway. They have a matrimonial dispute. Is the Divorce Law of British-India necessarily to be applied to these State subjects? Obviously not, you have to draw the line somewhere. I will not attempt to draw it this evening.

Colonel Peel. You are getting on the question of domicile.

Minutes of Evidence given before the Indian States Committee at Montagu House, Whitehall, S.W.1.

Tuesday, 30th October, 1928, at 3.30 p.m.

PRESENT.

Sir HARCOURT BUTLER, G.C.S.I., G.C.I.E., *Chairman*.
Colonel The Honourable SIDNEY C. PEEL, D.S.O.
Professor W. S. HOLDSWORTH, K.C.
Lieutenant-Colonel G. D. OGILVIE, C.I.E., *Secretary*.

His Highness The MAHARAJA of KASHMIR.

The Right Honourable Sir LESLIE SCOTT, K.C., M.P., appeared on behalf of the Standing Committee of the Chamber of Princes.

Sir Leslie Scott. Sir, I had got to the end of A (a) ii. The small set of cases under A (a) iv relates to the question of the ability of the Government of India, representing the Paramount Power, to bind the States by International Agreements, and the real point there, Sir, I think, is this. It is conceded by the States that, as a term of the Agreement of Paramountcy, they handed over to the Government the conduct of their external relations, but the scope of the power conferred upon the Government by that Agreement can only be determined if you bear in mind also that the Government in return agreed to observe the internal sovereignty of the States. You remember in the set of Treaties in 1818 where those two terms emerge so clearly. The Ruler is to have absolute sovereignty within his State and the Government is not to interfere in any way. Putting those two terms together, my submission is that the power of the Government to bind the States by International Agreement is subject to the limitation that they cannot make Agreements which, for their performance, involve interference with the internal economy of the State and that is illustrated by the two topics of slavery and opium under these cases. If you look at the Jodhpur case, Sir (page 726), that comes out clearly. You will remember that at the League of Nations a Convention was made relating to the two subjects of Slave Trade and Slavery, and the Draft Convention

was submitted to the States for their observations, and when the matter was dealt with at the League of Nations Sir William Vincent, in the declaration which he made in respect of the Indian States to the Sixth Assembly of the League of Nations, made the position quite clear. I think it is useful to take that first; it is the latter part of Exhibit C (Letter No. 1667, dated 5th September, 1927, from the Resident to the State Council, Jodhpur): "That part of the declaration which excludes the Indian States is necessary on the following grounds: (1) The internal administration of those States is in the hands of their own rulers, but the exact relations in which each State stands to the Government of the King-Emperor are dependent on individual circumstances and cannot be briefly explained The Indian Legislature cannot legislate for those States." That, I submit, is a quite correct statement of the relationship, and the scope of the Paramount Power's right to make Treaties binding upon the States.—" (2) Recent enquiries have satisfied the Government of India that slavery in the ordinary sense is not now practised in any Indian State, and that where conditions are present which may be held to amount to forced labour of the kind against which the draft Convention is directed, no serious abuses exist and progress is, in fact, being made in removing or mitigating such conditions (3) The draft Convention, however, imposes obligations upon the signatory States which would involve, in the case of India, direct interference with the domestic administration of the Indian States. The Government of India would be prepared to urge the Rulers of those States to initiate measures of reform if they had reasons to believe that gross abuses existed in any of them. But they do not consider that the conditions revealed by their recent enquiries would justify interference to secure full enforcement of the provisions of the Slavery Convention as regards forced labour. (4) On the other hand, it is to be clearly understood that in many States the standard aimed at by the Convention has already been attained, and that in all other States steady progress is being effected both by public opinion and by the spontaneous action of the Rulers"

The danger to the States here, Sir, is not in a failure to recognise the right principle, which has been explicitly recognised in that declaration, but in pressure being put upon the States to carry out arrangements that have been made, not necessarily absolutely binding upon India, but to an extent which commits the Government of India to the adoption of a certain policy. You will observe, Sir, under Exhibit "A" (page 726), the Draft Slavery Convention is forwarded, with this letter (No. 286, dated 5th February, 1926, from the Resident to the State Council): "I am directed to address you on the subject of the draft convention concerning the slave trade, slavery and similar conditions, which was communicated by the Sixth Assembly of the League of Nations to the Council of the League on September 26th, 1925. 2. The Council has resolved to transmit this Draft Convention, a copy of which is enclosed, to all Members of the League and to certain other Governments with a request that they will forward to the Secretary-General any observations they may desire to make not later than June 1st, 1926"—this letter being written on the 5th February. The next paragraph does not matter. Then you see in paragraph 4: "Article I—The first clause of the second definition

gives an extended meaning to the term 'slave trade' in which the element of trade or barter is not an essential ingredient Article 2.—Contains (a) an unqualified undertaking in connection with the slave trade as so defined; (b) a qualified undertaking in regard to slavery. . . . Article 6—After providing against conditions analogous to slavery, resulting from compulsory or forced labour for whatever purpose employed, this article goes on to draw a distinction between forced labour exacted for public purposes and that exacted for private purposes The debate on the Draft Convention which took place in the House of Lords on December 16th, 1925, showed that this Article is open to attack by humanitarian critics as failing to provide sufficient safeguards against the abuse of forced labour for public purposes and as tolerating the temporary continuance of forced labour for private purposes."—That Article, of course, would forbid, on its terms, what is, I think, known as *begar*, in the States of Northern India particularly, and although *begar* has, for instance, been abolished in Kashmir and many States, it has not been wholly abolished in all States.—" It seems probable that at the Seventh Assembly an attempt will be made to insert a definite denunciation of forced labour exacted for private purposes and to impose further restrictions on even forced labour for public purposes " That is the letter that it sent, and the only criticism, I think, of importance on that letter is, that there was not really time for the States to deal with the matter within the period limited If you look at the end of the letter, paragraph 9, it says: " In view of the obligation of the Government of India to communicate a considered reply to the Secretary of State on the questions at issue by the end of March, 1926, it is very essential that they should receive at least a preliminary reply to this letter not later than 15th of that month; I would accordingly request that the Durbar will be good enough to favour with their reply by the 1st March, at the latest." Well, three weeks, for dealing with a very big subject like that, in States where feudatories and various subordinate people are very directly concerned, is obviously not practical politics, and what the States feel is that in these matters there ought to be consultation with them as a body, in advance of dealing with these matters by international convention. The State points out in paragraph 3 of the answer on page 728 (No 597, dated 24th February, 1926): " There exists, however, an institution of hereditary domestic service amongst the aristocratic families of Marwar, as in other States of Rajputana, these servants being known as Darogas, Chakars, Golas, etc They are treated by their masters as permanent members of their households All expenses connected with their maintenance, education, marriage, births of children, funeral rites, and other social obligations, in short all expenses that would ordinarily be incurred by them in the course of their lives, are borne by their masters; and in addition they generally receive a small cash allowance In return their services are at their masters' disposal These conditions are cheerfully accepted by them in most cases, and it is a question whether most of them are not better off under this system than they would be otherwise Even in a part of British India, i e., in Ajmer, such servants are maintained by Istamarardars and even by some of the local Seths." After going through the details of the

difficulties, and dealing with these matters of domestic service on certain traditional and customary terms, the Durbar points out, in paragraph 6. "After fully considering all the aspects of the case, the Durbar thinks that any attempt to make a violent breach with the traditions of the past would not only be injudicious in the present state of public opinion but ineffective, and that with the advance of time, changes in the economic conditions and the education of public opinion, a change is bound to come in the angle of vision from which the relationship of master and servant is regarded, and the custom will, in the not distant future, die a natural death. However, in order to accelerate the process, His Highness the Maharaja is prepared, as a first step, to rescind the order of his predecessor which has been interpreted to mean that these obligations are enforceable through the Court of Law, though it is doubtful whether it can bear that meaning . . ." and so on. You see a thorough willingness to help in every possible way, but it is quite clear that difficulties are bound to arise unless consultation takes place in advance, and it is summed up in Exhibit B (page 730), paragraph 2 (Letter No. 668, dated 13th March, 1926, to the Resident): "The Durbar are inclined to think and respectfully to urge that the dictum enunciated above requires reconsideration In the light of repeated assurances given to Indian Ruling Princes by successive Viceroys for 'a scrupulous adherence to the Treaty engagements' the assumption of the Government of India that they have been invested with special powers, under certain conditions, to interfere in the internal affairs of an Indian State without the consent of its Ruling Prince seems to be inconsistent with their avowed policy, the observance of which they have so much at heart"—You see what the wording is that is objected to:—"It will be clear from what has been said above that, although the Government of India are, in this as in other matters, averse from interfering unnecessarily in the internal affairs of Indian States, they regard this as a matter in which, by virtue of their right to conclude international agreements on behalf of India as a whole, and of the obligations which they propose themselves to accept in respect of British India, they have definite rights and obligations which can hardly be questioned by the States themselves" (Extract from Letter No. 286, dated 5th February, 1926, to the State Council.) That enunciation of Government rights is fundamentally different from the declaration made by Sir William Vincent, and it is that to which the States object.

Well, Sir, the Bikaner case (page 721), is similar to Jodhpur; well reasoned argument put forward I will not read it; it is on those lines

The other question is the question of opium. I am not going to deal in detail with the opium question, but I would like you to look, just for a moment, at the Rewa representation (page 735) The fact that decisions are taken really before the States know quite where they are may be inevitable at present, but it is a fact: and the result is that the States are more or less committed (even if reservations are made) by the resolutions adopted by the League to which adherence is signified by the British Empire and by India. The point at issue is the right of the Government of India to intervene in the internal affairs of the

States in order to enable them to honour their own obligations. It should no longer be assumed that the Government of India can insist on the States taking such and such action to give effect to Conventions or Protocols of the League of Nations, unless they have been fully consulted and their consent obtained beforehand This is a real grievance which should be rectified. Very much the same thing has happened in the case of the Opium Convention, though the language used has been less uncompromising The case was this time put in the form of an eloquent appeal made by His Excellency the Viceroy to the Chamber of Princes While this method of approaching the question is greatly to be preferred to the more didactic methods described above, it should not be necessary for His Excellency to make an appeal for co-operation in a matter already more or less a "*fait accompli*" since the Princes should have had full opportunity of concerting their measures of co-operation before any convention had been ratified by India. For the reason given above the Rewa Durbar feel (*a*) that much too wide an interpretation has been put on the control of the foreign relations of the States, (*b*) that such control, as far as it exists, *imposes a corresponding obligation to safeguard the interests* of the States, (*c*) that to ensure this the States should be fully and frankly consulted before any commitments are made on their behalf, and (*d*) that as a corollary, no international agreements should be concluded, on behalf of India as a whole, which are automatically binding on the States, without obtaining their previous consent. That is the whole of that case, Sir

Now then, Sir, Volume II. The heading is "Intervention between Rulers and their Subjects and Feudatories." This covers a great deal of ground in this Volume, and as you all know it is a matter of great importance to the States, on the broad ground that any interference between the Sovereign and his subjects and feudatories *ipso facto* lessens his own power as the supreme Government of the State internally I am sure you are thoroughly familiar with the point. But the point being a plain one and the details of it being capable of statement in a few sentences, what I want to do on this head is to call your attention to the chief points, mention what the main points are in a few cases, and then ask you whether you would, with the guidance of the transcript of what I have said, just look at the cases in order to satisfy yourselves that what I have said as to their contents is justifiable. That will enable me to deal with it very briefly. I am very anxious, if I can, to finish this head this afternoon. That will take us, you see, more than half way through the second Volume.

I deal first of all with the feudatories because the subject is complicated there by the fact that some of the feudatories have their rights guaranteed by the Government of India. You remember the system of mediatised agreements for which Sir John Malcolm, I think, was responsible, which lasted for a few years from about 1818 to about 1820-24. There is a difference between the position of a feudatory who is guaranteed and that of one who is not, and it is important to understand exactly what the guarantee is. As the Committee know the guarantee was often effected historically simply by the Political Officer, representing the Government, being present at the making of a bargain between the Suzerain and the feudatory, and counter-signing the

document. In a sense the whole of the relations between the Government of Baroda and the States in Kathiawar settled by Colonel Walker were guaranteed in that sense by the signatories of Colonel Walker. Many of the States of Central India are what are called mediatised States They have a Suzerain with much more than the mere right to receive tribute with certainly perfectly definite rights of control over their internal administration, but rights that can be defined, and the bargain between the subordinate State and the Suzerain State in many cases was countersigned by the Government, and the relationship assumed by the Government, has, I think I am right in saying, usually been described as that of a guarantee. The terms of the guarantee did not find expression apart from the agreement that is guaranteed, but the relationship, as I submit, was simply that the Government undertook to both parties that each party would carry out his obligations to the other. I do not think that probably any of you will dissent from that statement of the relationship.

Colonel Peel: You do not say what right they had to do it.

Sir Leslie Scott: In most cases they did it at the request of both parties. In some cases they may have intervened at a time when they had, by force of arms, conquered one, and therefore put themselves in a position where they could, if they chose, annex, and instead of annexing they may have said "Well, we will consent to your holding your State as before on condition that you carry out your obligations to your feudatories." They might have said the same thing to the feudatory, but I will deal with that question, if I may, in my speech at the end. For the moment, my answer is that both those types of occasion of intervention exist, some in one case and some in another. But for the purpose of analysing the position, I will take the position where the Government has intervened with the consent of both sides. Undoubtedly that was true of the Kathiawar settlement—of the whole of it. I think it was true to a great extent of the mediatised States of Central India, too; but for the moment I am not dealing with the mediatised States. I am dealing with what you may call the mediatised estate held within a State by a subordinate holder. These subordinate holders seem to have many names, so that I hesitate to use any one of them.

The limitations of the guarantee by the Government, I submit, are these:—

(1) The guarantee extends only to the precise terms of the contract between the parties, and does not justify any vague or general right of protection.

(2) It does not extend to any rights not arising out of the guarantee contract, as, for instance, the prescriptive rights subsequently acquired by one against the other.

(3) The right of action by the Government only arises upon default by one party against the other, in breach of his contractual obligations; and that right of action only attaches when the Government is called upon by the aggrieved party to act.

(4) The fourth principle is that the obligation of the Government is given equally to both parties.

The obligation of the Government to abstain from interference between a State and its feudatory is, I submit, unaffected by the question as to whether there is a guarantee or not. The fact that a guarantee has been given does not confer upon the Government what you may call an original right of intervention at its own discretion. The converse interpretation involves necessarily the conclusion that the Government could interfere whenever in its discretion it thought right, and that discretional interference is one thing that is forbidden by the fundamental relationship between the Crown and the States. Complaints are made by the Princes that the Government guarantee in practice is often improperly made the pretext for interference, and in fact that the Government, by reason of its relationship as guarantor, has assumed a general power of protection which the guarantee position does not in fact give it, and has used that general status of protector, which it has so assumed, as a ground for interfering whenever it thought right. In those cases where interference has been regarded as wrong, it is generally because of that criticism that the States have so regarded it as wrong.

The cases given under this head are cases where intervention has, in the submission of the States, been wrong in most cases because the Crown has been arrogating to itself a general power of internal control which the guarantee does not give it In these cases, under this head A (a) v there are a good many guarantee cases, but there are a great many cases that are not guarantee cases. Of course, where they are not guarantee cases, no such question arises. It is obvious that the interference must be in breach of the relationship. In order to make it clear that I have in mind the ultimate right of intervention by the Crown, I add that I am not discussing at all the right of the Crown to intervene where there is a grave misgovernment, or flagrant injustice that may be causing danger of rebellion, or other disturbance of the peace. If the relations between the subordinate holders, feudatory and otherwise, and the Ruler of a State become so embittered as to create a danger to peace of such magnitude as to justify the Crown interfering under its right as Paramount Power, that right is a right which it must exercise by dealing with the Ruler and the administration and saying: "Unless you do what we say, we shall depose you, or use disciplinary steps of that kind" So long as the Ruler is allowed to be in his position of Ruler uncontrolled, it does not justify intervention between him and the feudatories.

Colonel Peel: Do you mean to say they cannot give him advice beforehand which would prevent the extreme situation arising of his being deposed?

Sir Leslie Scott: No, I did not say that.

Colonel Peel: That is what I should imply from what you said.

Sir Leslie Scott: I did not intend that to be implied. It is quite obvious in common sense, as you were indicating by your question, that if the state of things was such as to make the Paramount Power think that it would have to intervene very quickly, obviously the proper course is to tender advice to the Ruler before intervening. Every Ruler would ask for it. I entirely assent to that.

document In a sense the whole of the relations between the Government of Baroda and the States in Kathiawar settled by Colonel Walker were guaranteed in that sense by the signatories of Colonel Walker. Many of the States of Central India are what are called mediatised States. They have a Suzerain with much more than the mere right to receive tribute with certainly perfectly definite rights of control over their internal administration, but rights that can be defined, and the bargain between the subordinate State and the Suzerain State in many cases was countersigned by the Government, and the relationship assumed by the Government, has, I think I am right in saying, usually been described as that of a guarantee. The terms of the guarantee did not find expression apart from the agreement that is guaranteed, but the relationship, as I submit, was simply that the Government undertook to both parties that each party would carry out his obligations to the other. I do not think that probably any of you will dissent from that statement of the relationship.

Colonel Peel: You do not say what right they had to do it.

Sir Leslie Scott: In most cases they did it at the request of both parties. In some cases they may have intervened at a time when they had, by force of arms, conquered one, and therefore put themselves in a position where they could, if they chose, annex, and instead of annexing they may have said "Well, we will consent to your holding your State as before on condition that you carry out your obligations to your feudatories" They might have said the same thing to the feudatory, but I will deal with that question, if I may, in my speech at the end. For the moment, my answer is that both those types of occasion of intervention exist, some in one case and some in another. But for the purpose of analysing the position, I will take the position where the Government has intervened with the consent of both sides. Undoubtedly that was true of the Kathiawar settlement—of the whole of it. I think it was true to a great extent of the mediatised States of Central India, too; but for the moment I am not dealing with the mediatised States I am dealing with what you may call the mediatised estate held within a State by a subordinate holder These subordinate holders seem to have many names, so that I hesitate to use any one of them

The limitations of the guarantee by the Government, I submit, are these:—

(1) The guarantee extends only to the precise terms of the contract between the parties, and does not justify any vague or general right of protection.

(2) It does not extend to any rights not arising out of the guarantee contract, as, for instance, the prescriptive rights subsequently acquired by one against the other

(3) The right of action by the Government only arises upon default by one party against the other, in breach of his contractual obligations; and that right of action only attaches when the Government is called upon by the aggrieved party to act.

(4) The fourth principle is that the obligation of the Government is given equally to both parties.

The obligation of the Government to abstain from interference between a State and its feudatory is, I submit, unaffected by the question as to whether there is a guarantee or not. The fact that a guarantee has been given does not confer upon the Government what you may call an original right of intervention at its own discretion. The converse interpretation involves necessarily the conclusion that the Government could interfere whenever in its discretion it thought right; and that discretional interference is one thing that is forbidden by the fundamental relationship between the Crown and the States. Complaints are made by the Princes that the Government guarantee in practice is often improperly made the pretext for interference, and in fact that the Government, by reason of its relationship as guarantor, has assumed a general power of protection which the guarantee position does not in fact give it, and has used that general status of protector, which it has so assumed, as a ground for interfering whenever it thought right. In those cases where interference has been regarded as wrong, it is generally because of that criticism that the States have so regarded it as wrong.

The cases given under this head are cases where intervention has, in the submission of the States, been wrong in most cases because the Crown has been arrogating to itself a general power of internal control which the guarantee does not give it In these cases, under this head A (a) v there are a good many guarantee cases, but there are a great many cases that are not guarantee cases Of course, where they are not guarantee cases, no such question arises It is obvious that the interference must be in breach of the relationship. In order to make it clear that I have in mind the ultimate right of intervention by the Crown, I add that I am not discussing at all the right of the Crown to intervene where there is a grave misgovernment, or flagrant injustice that may be causing danger of rebellion, or other disturbance of the peace. If the relations between the subordinate holders, feudatory and otherwise, and the Ruler of a State become so embittered as to create a danger to peace of such magnitude as to justify the Crown interfering under its right as Paramount Power, that right is a right which it must exercise by dealing with the Ruler and the administration and saying · "Unless you do what we say, we shall depose you, or use disciplinary steps of that kind" So long as the Ruler is allowed to be in his position of Ruler uncontrolled, it does not justify intervention between him and the feudatories.

Colonel Peel. Do you mean to say they cannot give him advice beforehand which would prevent the extreme situation arising of his being deposed?

Sir Leslie Scott No, I did not say that

Colonel Peel That is what I should imply from what you said

Sir Leslie Scott. I did not intend that to be implied. It is quite obvious in common sense, as you were indicating by your question, that if the state of things was such as to make the Paramount Power think that it would have to intervene very quickly, obviously the proper course is to tender advice to the Ruler before intervening Every Ruler would ask for it. I entirely assent to that.

Colonel Peel: It is a political question, as to what point the interference should begin.

Sir Leslie Scott: A political question, and a question which, to a large extent, must depend upon the discretion of the Government of India—of the Viceroy.

Colonel Peel: Surely almost entirely on the discretion of the Government of India.

Sir Leslie Scott: I am prepared to go almost as far as that, if you will accept this qualification, that ultimately, if the discretion is wrongly exercised, it is a question of fact as to whether the conditions have arisen which justified the intervention. We have said that quite clearly in our Opinion If there were a Court capable of dealing with the question, it would be a question of fact as to whether the state of things was such as to justify intervention or not. Although for practical purposes I concede the view that the Viceroy must act upon his discretion in a normal case, ultimately it must be open to the Ruler to say: "*You have exercised your discretion wrongly, and had no right* to intervene, because the facts were not what you thought they were"

Colonel Peel: But only the Court of History can decide that point.

Sir Leslie Scott: You must forgive me and accept my submission upon the footing that I am appearing for States which want the machinery *altered in the future. All I am saying is that, as a matter of legal* test, if there were such a Court in existence to-day, if there had been in the last 20 years, as the Princes unanimously say there ought to be in future, then that Court would have to decide the question of fact, and it would be able to decide that the Government have exercised the *discretion wrongly or not, and would not be bound by the exercise* of discertion by the Government. That is the answer that I desire to make to your question as to whether it must be a matter of discretion of the Government. I say, candidly, in the first instance, yes, subject to the proviso that in the ultimate resort to the Court properly furnished with complete information on the whole subject, it is a pure question of fact as to whether the position has been such as to justify intervention or not. I may be right or I may be wrong, but I want to make my submission quite clear to you.

Colonel Peel: Quite so.

Sir Leslie Scott. I have referred to that because it is important, in considering these questions of intervention between the Ruler and his feudatory, to exclude that right of intervention, that is the right of intervention not between the Ruler and his feudatory, but to impose control on the Ruler—a separate right I concede that the conditions of things between the Ruler and feudatory might conceivably be such as to bring into existence other rights. But do not let us confuse the question raised under A (a) v with the wider and different question which is raised under the second heading. That is all I wanted to say upon that

Now if I may deal with this as quickly as possible, I think the best one I can take is Cutch (page 747) Under Article 10 of the Treaty of 1819 (Aitchison, Vol. VII, page 22), it is provided that "The Honourable Company engages to exercise no authority over the domestic

concerns of the Rao or those of any of the Jhareja Chieftains of the country, that the Rao, his heirs and successors shall be abolute masters of their territory, and that the Civil and Criminal jurisdiction of the British Government shall not be introduced therein." On the death of Jadeja Khanji of the Jadador Estate, the Durbar recognised a certain man as his successor, whereupon the widow of the deceased filed a suit in the Cutch Court for the restoration to her of the possession of the estate and lost her suit. On appeal to the Government by the widow, the Government decided (Letter No. 1404, dated 8th November, 1912, from the Political Agent) that the applicant was not and could not be a guaranteed holder, and had no right of appeal to the Government. So that there is no question of guarantee here. She had no right to go to the Government at all. In 1913 the widow telegraphed to the Political Agent and to the Durbar that her house had been opened by a certain person in her absence, and asking that arrangements should be made to have the house closed. The Political Agent (No 427, dated 7th June, 1913) thereupon forwarded her telegram to the Durbar for inquiry and report, instead of replying simply that it was nothing to do with him. The Durbar (No. 339, dated 11th June, 1913) replied to the Political Agent that the widow had been told by it to go to the Court The Political Agent (No 781, dated 13th June, 1913) then pressed for a police inquiry The Dewan replied (No 369, dated 30th June, 1913) that if she applied to the Court both parties would be heard and a police inquiry would be ordered by the Court if necessary, and added that the lady was not entitled to approach the Political Agent. The latter replied (No 872, no date quoted) that he could not see how a party could approach a Court of law in that way. I want you to read the letter (page 749, Exhibit 6) · "With reference to your letter No. 369, dated the 30th ultimo, I have the honour to state that I fail to understand how a party can approach a Court of law before the local police make any inquiries in a cognisable offence If a lock of a shop in the Bhuj Bazaar is found broken, would the police take up the case and find out the offender, or would the aggrieved party go to a Court of law and ask the Court to direct the police to make inquiries The attitude of the Durbar shows a tendency to shield the offender I would therefore again suggest that as the Jagir is under the management of the Durbar, as the complaint is against the Jagirdar himself, as the Jadeja Court has no police of its own, and as the offence is a cognisable one, the Durbar will institute police inquiries in the matter and let me know the result (2) With regard to your paragraph 3, I hold the opinion that anyone has a right to approach the Political Agent, more especially when residing on the estate of a guarantee holder" The whole tone of that letter is wrong It has nothing to do with the police It is perfectly beside the point It was not a guarantee holder He had no right of intervention, and obviously, to say that anyone has the right to approach the Political Agent was wrong It is a small thing, but it is illustrative of the sort of thing that is bound to cause trouble, because it is understood by anybody who is aggrieved with the Durbar that all you have to do is to write to the Political Agent, with the result that everybody with a grievance does it.

The next one I want to take is that of Bikaner (page 739) It is an interesting memorandum, but I am not going to read it in detail.

Under the Treaty of 1818 (Aitchison, Vol. III, page 343) there was a provision entitling Bikaner to the help of the Government for the suppression of robbers and rebels At that time the country was very much disturbed. In my view that term of the treaty was intended for temporary application and obviously was not intended to be a permanent clause. But in fact there were one or two interventions by the Government in the case of rebellion by the Sirdars of the State even as late as 1883. After that intervention Lord Ripon appointed a resident Political Agent and ordered the Maharaja to be guided by his advice (vide Kharita, dated 31st December, 1883, from Lord Ripon to the Maharaja) That was so for a time. In 1904 the Sirdars again gave trouble, and the Maharaja himself appointed a commission to inquire into the conduct of these people, and the Commission, as a result, awarded suitable punishment to the ringleaders. The Government of India thought that the punishments were too severe and intervened (Political Agent's letter No. 160 P., dated 7th December, 1905), at first proposing to modify the punishment itself, but finally indicated the modifications and agreed to letting the Maharaja himself do it. Then, in 1921, one of these somewhat rather turbulent nobles and his two sons adopted a contumacious attitude towards the Maharaja and the Maharaja punished them Again the A.G.G intervened on their behalf (Letter No 155 P., dated 28th February, 1923). Those are, very briefly, the facts. These nobles who gave the trouble were not guaranteed in any way at all, and my submission on behalf of the Princes is that that is not the kind of conduct on the part of the Government that helps the Rulers to administer their States well Where leading nobles think that they can get help from the Government it may be very very difficult for the Ruler to exercise effective control over them.

Then the next one is the case of Dholpur (page 750) By the Treaty of 1806 (Aitchison, Vol III, page 299), the East India Company delivered over to the Maharaj Rana of Dholpur in sovereignty to him, his heirs and successors a certain district which included Taluka Sarmuthra. This district has always given trouble to Dholpur. There is no guarantee of any kind and Dholpur has full power, as you know. In 1851 the Thakur of Sarmuthra rebelled and his estate was confiscated. Later the holding was restored to a son. Subsequently another Thakur of that Thakurate behaved so badly that his management was suspended by the Durbar. That was in 1889 He was shortly afterwards reinstated, and he showed no greater sense of responsibility and was in 1905 again deprived of his powers and ordered to reside in Dholpur. He appealed to the Political Agent, who told him (Letter dated 3rd December, 1905—no reference quoted) that the Durbar had acted properly, and in a way most conducive to the interests of Sarmuthra and its inhabitants. That was the view of the Political Agent But, in 1906, a year later, the Government of India called for a report (vide letter dated 4th March,, 1906, from the Political Agent—no reference quoted) and asked to see the accounts of the estate. The Political Authorities prevailed on the Durbar to allow this man to live in Agra, he having been ordered by the Durbar to live in Dholpur, and to grant him an additional Rs 100 a month *Shortly afterwards, the Political Agent (Letter dated 23rd March,*

1906—no reference quoted) gave an order that this man should now be allowed to go and arrange about a house. In the view of the Maharaj Rana of Dholpur, that order gave encouragement to the man and to all his friends, which was quite ruinous to the authority of the State, as he looked upon the extra allowance and everything that had been done as the work of the Political Authorities, and, of course, he had the precedent of appealing to them again. It resulted in his friends in the State actually rebelling, and, finally, in 1921, the State had to take extreme measures That is the position in the case of the State of Dholpur. The facts speak for themselves, and I will not read the documents

The next one that I want to take is that of Gwalior (page 753) The small Rajput State of Khilchipur became a tributary of Scindia in 1793 In 1819 the Chief of Khilchipur died, and the succession was contested (vide Aitchison, Vol. IV, page 320). Gwalior then asked the Political Agent at Bhopal to investigate and report as to who ought to succeed, or who was entitled to succeed (vide letter dated 18th July, 1819—no reference quoted). At Bhopal, in the presence of the Political Agent, a provisional agreement was concluded (Aitchison, Vol IV, page 317), as the result of a settlement, subject to the approval of Scindia Later on, the successful claimant executed an agreement (dated 21st January, 1822) by which he promised to pay tribute to the Durbar, and pay succession Nazrana by instalments Then, later on, there was trouble in Khilchipur and the Resident looked to Scindia to put it down. That is recognition of Scindia's authority over Khilchipur In 1844, by the Treaty of that year (Aitchison, Vol IV, page 78), Gwalior assigned, as you may remember, to the Government certain territories and certain tributes Among the tributes assigned was the tribute payable by Khilchipur. That was simply an assignment of the right to receive that money and not of the feudal rights that Gwalior had over Khilchipur, which were retained In 1857 Khilchipur signed an address to Gwalior recognising Gwalior as their master, and in 1868 paid Nazrana to Gwalior Then you get an interval of 30 years In 1899, on a succession occurring, the Resident (No 1912, dated 19th April, 1899) asked Gwalior if it had any objection to a particular man being recognised as Rao of Khilchipur Gwalior replied "No" and asked the Resident to arrange for the payment of the usual succession Nazrana (vide letter No 1188, dated 27th April, 1899) In answer to that the Resident (No 3208, dated 10th June, 1899) said that Khilchipur was a guaranteed chieftainship of the second class, and it was not proposed that any Nazrana should be paid In 1908 Singh, the man in question, died, and the Resident (No 3421, dated 2nd June, 1908) informed Gwalior that the Government proposed to recognise his son's succession, unless Gwalior had any objection to urge to which Gwalior replied (No. 1590, dated 17th August, 1908) that they had the right of recognition and that the holding was not a guaranteed holding Then a dispute arose as to whether it was a guaranteed holding or not Into the question of whether it was a guaranteed holding or not I am not going because I do not think it is sufficiently relevant for your purposes But, whether it was a guaranteed holding or not, you have there several occasions of intervention by the Government.

They were asked by Gwalior to intervene at one time, but the Government intervened several times when they were not asked, and, of course, where there is a subordinate estate of an important kind, like Khilchipur, Government intervention encourages the holder of that estate to think himself independent.

The next one is that of Idar (page 775). It is a very interesting one. If you like I will read it right through, but it runs from page 775 to page 919. What we have done there is this: the whole of the matter has been put forward in memorials. They are very fully and well put together, and I thought it better that you should see the original material; but the points for your purposes can be stated in a small compass There are six memoranda about Idar, the first three relating to his Pattawats, the other three to his Bhoomias. These people, as will be seen, are grantees of the Maharaja of Idar, holding their grants subject to military service and to the Maharaja's pleasure. Bhoomias are agriculturists, are they not? It means "children of the soil" I am told.

Secretary: Landholders

Sir Leslie Scott: Pattawats are grantees, Patta is an estate and a pattawat is an estate holder. From 1829 down to 1924 there have been occasions for British officers to record decisions respecting the mutual rights and obligations of the Idar Durbar, and these grantees and the memoranda will show that consistently during these 95 years it was held that these grantees were the dependents of the Maharaja with no rights, for the enforcement of which they could invoke the support of British officers Indeed the orders of 1924 in the case of Mundetti and others read (Letter No A.D.M. 331, dated 31st October, 1924, from Political Agent, Mahi Kantha): "With reference to his petition, dated 28th May, 1923, to the address of His Excellency the Governor, Bombay, complaining of alleged harassments and usurpations of rights by His Highness the Maharaja of Idar and asking for the appointment of a Commission to enquire into his alleged grievances and ascertain his rights, Chauhan Laksman Singhji of Mundetti is, under orders of Government, informed in the first place that he is not entitled to submit representations to the Agency direct, but only through the Durbar, and that joint petitions are objectionable." Now, Sir, for 95 years there have been a long series of consistent decisions by the Government that the Government had no right to intervene between Idar and these pattawats and bhoomias; but it appears that in 1926 the Political Agent, Major Meek, interested himself in the complaints of Idar's Pattawats and Bhoomias and submitted a report to the Bombay Government, in which he described the official records on the subject as a century of official error. This report was given to the Dewan of the State, who took some notes from it, but later, when in order to meet Major Meek's case, the Dewan asked for important extracts from the report, the request was refused I comment, Sir, upon that refusal; I shall have to deal with that subject, but in my submission it is a very serious grievance, this withholding of documents. His Excellency the Governor invited the Maharaja to a personal interview on the 6th November, 1926, and handed him two memoranda, one relating to the reorganisation of State administration, and the other to the relations of the State with the Pattawats and other Jagirdars

So far as the reorganisation of the administration was concerned, the Maharaja took immediate action upon the Government's memorandum and no question about the necessary reforms remains. We are only concerned with the Government's second memorandum. This is a note dated 24th October, 1926, of which the 5th paragraph reads as follows:— " The second main issue relates to the Pattawats and other feudatories and Jagirdars. There is, to my personal knowledge, grave discontent among the Pattawats, Bhoomias and Bhayats It is stated that the demands on them have been excessive, that the feudatories resent these demands and consider them as an encroachment on their rights. I have received so many representations on this issue that I am convinced, according to my information, that the situation constitutes a menace to the peace, not only of the State, but of the surrounding country."

There is an illustration of the point raised by Colonel Peel, if it was a menace to the peace, then the Viceroy would be entitled to intervene and take charge of the administration to the extent of at least telling the Ruler that he was doing wrong, and that unless he did right further steps *would be taken; but it does not justify intervention between* the Ruler and his subordinates as long as the Viceroy does not think the position is reached of making his intervention necessary on the other basis The question with which we are here concerned is that of the right of the British Government to intervene between the Maharaja and his jagirdars The Bombay Government proposed to appoint a Commission to investigate and report to the Idar Durbar on this amongst other questions, but they laid down that on receipt of the Commission's report the Durbar must consult the Political Agent before taking any action To take it briefly, the Commission was to be composed of a representative of the Durbar, a representative of these discontented feudatories and a Political Officer acting as President. That was tantamount to a proposal that the matter should be decided by arbitration in which the Political Officer would be the sole arbitrator, because obviously the other two arbitrators must be to some extent regarded as partisans in a case like that The Idar Durbar raises the question directly as to whether the Government has the right to force such a Commission upon it My submission to you, Sir, is that there is no such right They replied that the proposal to appoint a Commission " is not only entirely uncalled for, illegal and contrary to every rule of policy, but the consequences of it will be inconceivably disastrous, not only to Idar, but to all the States *throughout India; for the publication of the appoint-*ment of a Commission will flare up a host of Jagirdars in the numerous States of India into an attitude of defiance of the certain position reached by the long-standing decisions of the highest authorities." His Highness added " If there was misrule in my State, I was responsible, and I should suffer personally but none of these two facts is a ground for punishing Idar State and for disturbing the settlement of a century, which seems prima facie to be the object of the proposal I am a temporary holder in charge of the State I would consider it a great calamity if during my rule my State is to be deprived of any of the rights which it has acquired during the course of a century " His Highness also complained that there should be some limit to the latitude allowed to a Political Agent in submitting his

confidential and ex parte reports and in importing therein entirely irrelevant matters.

Well, Sir, that is the issue I do not propose to go through the details I would like you, if you would, just to look at two documents. On page 856 (Exhibit 7) is an agreement of 1859 of the Pattawat of Tintoi. It is one in which it is quite clear that the Pattawat is a feudatory under the control of the Ruler of Idar. I am going to read two sentences from a judgment given (dated 15th January, 1886, and signed by the Political Agent, Mahi Kantha, and the Dewan, Idar State): "The point for decision in this case is:—Has the Chief of Tintoi, he being a Sirdar Pattawat of the Idar Durbar and therefore subordinate thereto, the right of approaching the Agency direct in any matter in which he wishes to make a complaint, instead of going through his Durbar. My finding on this point is, that being subordinate to Idar, he has no right to approach the Agency direct in any matter whatsoever but must do so through his Durbar." Then he goes into the evidence, and the last paragraph says: "The above proofs must undoubtedly establish the fact that the Chief of Tintoi is in every respect subordinate to Idar, that the arrangement was entered into by the Chief of Tintoi, was ratified by Idar, recognised by the Agency, acquiesced in by the Bais (if that were necessary) and eventually approved of by Government." That, you see, discloses this position, that for a whole century the position is recognised by Government as being one of suzerain and feudatories in explicit terms. Then after the close of that time some Political Officer, Major Meek, who had been investigating the records, raises the whole question, and the State of Idar says: If this kind of uncertainty is to prevail over our relations with our feudatories, no Ruler will know where he is and no Ruler will have any real authority. Give me authority over my feudatories and I will keep order. If you do not interfere, you will give me the authority, automatically I shall get it

Then *the next one, Sir, is the case of* Nawanagar (page 1006). I think it is convenient to take that next. In this memorandum there are two cases raised, one is the establishment by the Government in 1872 of a special court for deciding disputes between Kathiawar Rulers and their Girassias.

Chairman: That was the Rajasthanik Court, was it not?

Sir Leslie Scott: No, that is the Political Court. The Rajasthanik Court was a Court that was started at an earlier date than that, about 1866, for the purpose of deciding disputes between the States.

Chairman: Yes, I remember that.

Sir Leslie Scott: It was one of those disputes that went up to the Privy Council in 1905 from that Court. This Court for dealing with Girassia cases was to decide disputes between this particular kind of landholder called a Girassia and his Ruler. Nawanagar makes the point that there was no right whatever to appoint that Court, firstly, because in any event, even if they had been guaranteed holders, it would have been an interference, under the guarantee the Government not being entitled to intervene until the Government has been called upon by one of the parties to help him in view of the default by the other; and on the further ground that they are not guaranteed at all.

I think Colonel Ogilvie is familiar with the Kathiawar conditions, and he will, I know, remember that in the Walker Settlement of 1807 Colonel Walker made no terms with anybody who was not a tribute payer. Talukdars with jurisdiction and paying tribute to either Baroda or the Peshwa were brought into his settlement The Fael Zamin Bonds at that time, which were countersigned by him, were in respect of the tribute payers only. Now these Girassias were not tribute payers at all, and therefore they did not come into the Walker settlement, and consequently they are not guaranteed holders That is the position. Nawanagar says, and I submit rightly, that that being so, the appointment of a Court to decide these disputes was a departure from the agreed relations set up by the Walker settlement under which the Crown, as you remember from the quotations I gave you in the case of other States, undertook to preserve every one of the States in their existing state of possession and powers and not to interfere, and that it is a breach of that obligation to interfere That is the point and it is interesting to observe that in the end the Government has given way and abolished the Court. But it is a very good illustration of the principle It can be taken very shortly now, because I have given you the point and that is the whole of it There are one or two references I would like to ask you to look at in the text

Chairman: The grievance ceased with the abolition of the Court

Sir Leslie Scott· Yes, they ultimately agreed to the abolition of the Court

A meeting of the officials was convened by the Political Agent at which the whole question was discussed, and, as a result, a memorandum (dated 11th July, 1871) of objections was submitted by the officials. In this memorandum it was urged:—(1) That it was clear from Colonel Walker's report that the Kathiawar Chiefs enjoy the fullest exercise of sovereign rights over their subordinate Girassias. (2) That the Fael Zamin Bonds did not bind the Chiefs in relation to their subordinate Girassias, as is clear from Colonel Walker's report, and that the Government of Bombay had passed a resolution (No 576, dated 22nd February, 1864) declaring that the Fael Zamin Bonds had no reference to the subordinate Girassias (3) That the State enjoyed, under the Moghuls as well as under the Mahrattas, every right of full sovereignty without any interference That Exhibit is a very well reasoned document very clearly put I will not trouble you to go through it I think there can be absolutely no doubt about it that under the Walker settlement these Girassias are not guaranteed In that document I want to look at one paragraph only, paragraph 7 "One of the most important points to which we wish to direct attention is the statement made in Mr. Wedderburn's memo, para. 12, that what Sir Stafford Northcote wrote (in his despatch of 23rd November, 1867) that 'there were two classes of subordinate Girassias guaranteed, and not guaranteed, was a misapprehension' It does not however appear, on due consideration, that Sir Stafford Northcote made any mistake at all For ever since Colonel Walker's Settlement, there are two classes of Girassias landholders in Kattyawar, viz, the separate tribute-paying Talukdars (called in common parlance Thakors or Rajas when powerful, but only 'Girassias' when possessing little

territory) who have been ever since 1807 guaranteed by the 'bhandaree' of Colonel Walker, and the subordinate Girassias with whom the British Government contracted no engagements, and to whom legally it owes no protection. And it was, we submit, with a full knowledge of this fact, that Sir Stafford Northcote directed that there should be no interference between the unguaranteed subordinate Girassias and their superior Talukdars We cannot see therefore how, and on what grounds, the present Political Agent in his Report of 13th July, 1868, can point out the misapprehension of Sir Stafford Northcote in the matter. We therefore request to be furnished with copies of the despatch of 23rd November, 1867, and the Report of 13th July, 1868, when we trust to be able to put forward still more convincing argument in the matter." That request was not complied with and copies were not given That is another illustration of that trouble. I will not read the rest of that, but on the next page is the memorandum of Government in answer The Political Agent (No. 189, dated 11th August, 1871) "submits, with remarks, a reply of the Karbharis of the principal States on the subject of hearing Girassia and Bhayat Appeals. 2. Colonel Anderson, on receipt of this Government Resolution (No. 1277, dated 29th March, 1871) held a meeting of these Karbharis The whole question was then discussed"—I will not trouble with the detail.—"3 With regard to the first request"—that is that the Court should be abolished—"the Chiefs should be informed that in making arrangements for hearing the complaints of the subordinate Girassias Government are acting under the express instructions of Her Majesty's Secretary of State, and His Excellency in Council is not prepared to re-open this part of the question."—So that you see the arguments raised by the Kathiawar States never seem to have got consideration at all —"4. His Excellency in Council holds that a strong administration in Native States is essential in order to secure the well-being of the people He would not therefore regard with favour any measure likely to weaken the hands of the Chiefs. But in the present case it appears that the administration of the Kattyawar States will be strengthened, not weakened, by an arrangement which will remove a fertile source of disorder and discontent. And upon consideration the Chiefs will probably themselves see the advantage of obtaining a simple and effective machinery for disposing finally of this special class of cases, which must otherwise lead to much irregular interference on the part of Government and their Officers"—I like this sentence very much, if I may ask you to look at it—"At present the Chiefs are in a very difficult position with regard to Gras cases in which they are themselves interested. And by cordially accepting the arbitration of Government they will give the best answer to those who desire to throw discredit on their administration by alleging that the Chiefs, in deciding these cases, become the Judges in their own cause and the despoilers of their weaker brethren" I could not help thinking of a line of Burns'—

O' wad some poo'r the giftie gie us
To see oorsels as ithers see us

That is the very complaint all the States make, of the Government being judges in their own case, in a dispute between the States and the Government.

Colonel Peel: The Governor who wrote that letter was wrong.

Sir Leslie Scott: Yes, but that is quite a different point because there was no right to intervene, no right at all to intervene. Let me put it boldly. The States were entitled as a right to conduct these affairs in their own way. I can quote to you dozens of official pronouncements that the risk of some measure of mis-government in a State does not justify interference by the Paramount Power, and it is infinitely better that the Paramount Power should stand by and see some amount of mis-government rather than it should interfere. A good many letters to that effect are quoted in the introductory historical memorandum which you have already read, and my point is that there is no right to interfere, that the Government here is putting forward an argument, which is obviously of great force where there is a right to interfere, and it is an argument that cuts both ways, it is a double edged weapon. Here what the States are complaining of all the time is that they have grievances against you for doing things which you are not entitled to do, making a profit from doing them. In those sort of cases they say it is not right that you should be judge in your own case, it ought to be referred, as they have asked it ought to be referred for years now, to an impartial judicial tribunal. And that is the very point the Government is making here It is a point and standing by itself, it is a very good point, but it does not arise simply because there was no right at all of intervention I will not trouble you to read the details of the letter further. The answer (dated 1st January, 1872, to the Governor, Bombay) was a very dignified protest, and if you look at paragraph 5 they say "We must also express our regret that we have not been informed of the grounds upon which Government has formed the conclusion that justice is not administered in Gras cases by the Talukdari Courts. We do not admit that justice is not now perfectly administered Had we been favoured with copy of the correspondence on which the decision of Her Majesty's Secretary of State for India was passed, we should gladly have furnished any explanations that might have been required. . . We are prepared to defray all the expenses attending the arrangements proposed in the accompanying memorandum and relying on the support which, we trust, will be accorded by the Political Agent, we hope that the proposed settlement will be completed in about four years. We cannot, however, but respectively urge that we have never recognised, nor do we at present recognise, the right of Government to assume jurisdiction in these cases." That is the point, Sir

Then there is another point raised by Nawanagar with regard to these Jagirdars. In 1868 the States were subjected to a prohibition of Government (vide Kathiawar Agency Gazette, dated 9th July, 1868, Vol VI, page 123) by which these Girassias were forbidden to mortgage or sell their lands to their Chiefs. Now, you will remember, that in the Fael Zamin bonds there is provision that lands may not be sold from one jurisdiction to another, but that applies solely to independent Thakurs or Chiefs, not to the sale by a subordinate Girassia to his own Ruler, unless it is a case of an unconscionable bargain which is specially dealt with in the Fael Zamin bonds Then in 1907, Sir, although the prohibition was removed, a rule (Political Agent's Notification No. 22, dated 17th May, 1907) was made that all

sales had to be registered in the office of the Prant Officer, that is the District Political Officer. I submit, Sir, on behalf of all the States of Kathiawar, that that is not a rule which is legitimate, and that rule is still in force to-day although the Court has been abolished. This question here, of course, is another illustration of the submission that I made before, that assuming, contrary to my submissions, a right to interpose and impose a foreign jurisdiction for the sake of security, that right must cease when the security is restored and there is no further danger to the peace, and the presence in Kathiawar to-day of civilised administration proves that any right based upon that contention must have, in my submission, lapsed long ago.

Now, Sir, would you kindly look at the Jaora cases. There are five Jaora cases in this volume. I want you to look very shortly at four. The first we come to is on page 926 You remember, Sir, by the Treaty of Mandsaur (Aitchison, Vol. IV, page 197) between the Company and Indore, the State of Jaora was guaranteed to the Nawab of Jaora, Jaora having been a tributary of Indore, and, conversely, payment of the tribute by Jaora to Indore was guaranteed to Indore But this case (No. 1 of Jaora) relates to interference by the Government in regard to guaranteed Sanads in Jaora. Jaora is, for all practical purposes, except for the payment of tribute, an independent State; I mean independent in regard to internal affairs This relates, Sir, to the claim of various Thakurs in the State of Jaora for Abkari compensation. In 1909 Jaora drew up a scheme for the reform of their Excise organisation, which involved closing a large number of small shops in some of these jagirs. The State issued a notification that those Thakurs who had abkari rights might have compensation, the test being as to whether they had a grant of right under a Sanad or order of the State. The Political Agent (No 878/105-9, dated 13th March, 1909) expressed his approval of the scheme, but added an opinion that jagirdars in enjoyment of abkari rights should be compensated whether they enjoyed the rights under a Sanad or express grants or only by prescription. If they only had prescriptive rights the compensation should be on a lower scale Even assuming that these jagirdars were guaranteed by the British Government, the guarantee of the British Government would only extend to the rights contained in the Agreement that was guaranteed, that would be by the Sanad; it would not extend to any prescriptive rights that the jagirdars may have acquired subsequently. The State then asked for sanads to be sent in, in order to see whether there were any rights Two estates called Sirsi and Kherwasa sent in sanads, one in Persian and one in Hindi. The Persian being the authoritative text in Jaora there was no reference to abkari rights in the Persian text, but in the Hindi text there were two words inserted, "Wa Kalali" which, I am told, mean abkari rights, interpolated in a different pen and in different ink between the lines and there was no such corresponding provision in the Persian text. Jaora took the view (No. 273, dated 15th April, 1909) that these were forgeries by some hand at some time, and that the Persian text being the authoritative text, they had no rights, and the same ruling was applied to another estate whose sanad was illegible, but had been given at the same time as the first two. There was no appeal against that ruling of any kind Then in 1916—I

am going to skip a bit—there was a ruling by the A.G.G. (No. 458 (c) 229/12, dated 18th May, 1916) that the Persian text was the authoritative text, and that the Thakurs could not, therefore, found title to exercise rights on their sanads—and this is the point—that they were entitled to compensation because of the effective prescriptive rights Now the State says the A.G G. had no right to give any such ruling at all and could not confer any rights upon the Thakurs. The Thakurs were feudatories of the State, the State had decided the matter many years before—at least nine years before—and that there was an end of it, there being no appeal. Then, in 1920, a Political Agent (No. 813, dated 12th February, 1920) had gone round saying that copies of a Kabuliyat had been found, and ordered the State to *grant compensation* in perpetuity. That order was confirmed by the Government (vide letter No 1793/229-12, dated 25th June, 1924, from the Political Agent).

Chairman: By the Government of Bombay?

Sir Leslie Scott: I think by the Government of India It decided that compensation should be paid in perpetuity, but that, owing to the contradictory opinions of Political Officers in the past, arrears of compensation should only be paid from 1916 (Political Agent's letter No 5571/515-25, dated 3rd September, 1926) That was the order of the Government. The State submits that the Government's carrying on of this Jagiri does not confer on the Government the right to adjudicate on every dispute between the Ruler and the feudatory, and that there cannot be any right in Government Officers *to keep on changing their minds an unlimited number of times* I do not want to go into it in detail You will find the facts there In considering all these cases, I venture to submit the practical importance of it is the enhancement of the authority of the Ruler in his own State so that he may have the necessary power to enable him to govern well, as the Government want him to do.

The next one (page 944) is another Jaora case It is a case of what is known as the State of Piploda, which in the Manual of Indian States, published by the Government, is represented as having an area of 35 square miles. Jaora contends that Piploda is to-day what it always was, a feudatory of Jaora I am not inviting you to decide the question as between Jaora and Piploda, because that is not part of your reference. I appreciate that But there are some very interesting questions of principle raised by the discussion By the Treaty of Mandsaur (Aitchison, Vol IV, page 197) the tribute of Piploda was assigned to Jaora. By an engagement of 1820 (Aitchison, Vol. IV, page 420) mediated by Captain Borthwick between Jaora and Piploda, Piploda agreed to pay Tanka in the Jaora Cutchery and to furnish a security. It also agreed that half the collections from the Sayer—that is, Customs—of Piploda were also to be paid to Jaora. In 1844, a Muchalka or security bond (Aitchison, Vol. IV, page 421) was executed by the Thakur and published, in which he undertook with Jaora to perform certain obligations It was executed before Sir Charles Wade It was ordered at the same time that the principles of the Muchalka should not be departed from and that Piploda should be treated as a feudatory of Jaora. That order was signed by Sir Robert Hamilton on behalf of the Government, so it it was clearly a mediated document In 1901, Piploda laid a . ·

before the Government and claimed that the Muchalka of 1844 should be abrogated, and that the Piploda Vakil should no longer attend at Jaora and that instead of a division of the actual receipts of the Sayer a fixed sum should only be paid by Piploda to Jaora. In 1905, the Government of India decided that the Muchalka of 1844 was binding, and upheld the right of Jaora to demand the attendance of the Vakil from Piploda (Aitchison, Vol. IV, page 393). Fifteen years later, Jaora, upon the guarantee given by the Government on their documents, the Treaty of Mandsaur, the Agreement of 1820 and the Muchalka of 1844, appealed to the Government for help with regard to the default of the Thakur who was, according to Jaora, at that time showing contumacious conduct, saying that the Thakur of Piploda should be declared by the Government to be a feudatory to Jaora, and giving details about confirming the rate of exchange for the tribute and as to feudal service. That was in 1920. In 1924 the Government decided against Jaora (Malwa Political Agency letter No. 155-56, dated 10th January, 1924), saying that Piploda was an independent mediatised chief and that the Muchalka of 1844 was obtained by coercion and was null and void. Jaora appealed against this decision to the Secretry of State, but their Memorial (dated May, 1925) was withheld (Malwa Political Agency letter No. 4106, dated 17th June, 1927) on the ground that it was time-barred, that is to say, it was more than a year.

There are one or two important comments to be made I do not think I need trouble you to read the details. The whole of the Memorial and all the Exhibits are set out in the print here. I only want to call your attention to certain aspects of it. There you have the attitude of the Government continuing over a long period of time, and then suddenly reversed, and reversed by a procedure in which the State of Jaora did not know the grounds of the decision, and was given no opportunity of knowing them. There was obviously an issue of fact, or an issue of fact and law, suitable for trial by an independent judicial body. My submission is that that was a case where that course could properly have been adopted It is the kind of case for which there ought to be a Court of the kind. The use by the Government of the rule about the time limit for appeals to the Secretary of State under their Memorial Rules, with which you are familiar, I venture to submit may, in a case like that, be very arbitrary. Here the Government had taken the side of Jaora apparently for a long period of time, and then suddenly took the opposite view. Surely that was very much the case where a good deal of rope should properly be given to the State, who unexpectedly lost its position by means of a decision of the Government, the ground of which it did not know. It is very interesting to observe in the papers the fact recorded by the Government, that beyond doubt the execution of the Muchalka of 1844 was obtained by coercion, and the view of the Government is that, because it was obtained by coercion, it ought not to be treated as binding If it were obtained by coercion, by undue pressure, I should accept the conclusion that it ought not in law to be treated as binding But, of course, that is a principle of very wide application, and may be a principle of great importance. I observe that the Government have enunciated its application in a very important case.

Then the third case of Jaora is on page 990. I will not ask you to read that in detail. Apart from the historical justification for this view to be found in the genesis of the "Guarantee" System, even in a commonsense view of the matter, the idea of guarantee merely involves an obligation on the Guarantor (the British Government) to hold the parties (suzerain and feudatories) concerned to their respective rights and obligations, and not to allow any encroachment upon those rights and obligations by either party. The Guarantee of the British Government does not, and was never intended to, remove the feudatory "guarantee-holders" from the pale of the suzerain Durbar's executive or other lawful authority. To extend the import of "guarantee" beyond these terms is to create a State within a State. It is unnecessary to emphasise that in every case in which a British Officer mediated a settlement between a suzerain State and its feudatory and obtained for the latter a lease or Sanad from the former, the British Government, as the guarantor of such settlements, is bound to see that all the conditions of these leases and Sanads are scrupulously respected If the British Government would not permit any encroachment on the rights of the guaranteed feudatories, it must equally protect the inherent and express rights of their Sovereign Durbars What it really does is that although in theory it admits that the parent Durbars are suzerains over their offshoots, namely, the guaranteed estates, yet in actual practice it assumes to itself the functions of suzerainty The grievance of the Jaora Durbar in this respect becomes the more profound when we take into account the fact that the so-called "guaranteed" estates under this Durbar are not in fact such, in the real sense of the term, but they have been treated as such merely owing to the insertion of their Sanads in the volume of Aitchison's Treaties It will be apparent from the few instances given hereafter that often the elevation of the various jagirdars of Jaora to the position of mediatised chiefs under the British Guarantee has been the result of arbitrary procedure on the part of the Political Department (Details of a number of different cases are shown in the print from pages 990 to 1000) Broadly speaking, I submit that there is a strong arguable case on the part of Jaora, with the balance of probabilities on its side, that in the cases of the two estates, Sidri and Bilaud, they were not guaranteed estates. In the case of Sadakheri, Borekhera, Sirsi and Kirwasa, they were treated as guaranteed estates owing to a mistake Colonel Borthwick, during a minority of Jaora, acting for Jaora signed with the mystic letters "P A" after his name, which have been misinterpreted "Political Agent" whereas they were in fact intended for "Personal Assistant" to the minor, as you get in one of the treaties, where you see those words written out at large However, that is a detail and does not touch the real question of principle that is involved.

Then I will not trouble you about Jaora case No 4

No 5 of the Jaora cases is at page 1002 I want to refer to Aitchison, Volume IV, page 5 It says "The guaranteed Chiefs may all be divided into two great classes, namely, first, those Chiefs in the administration of whose affairs the interference of the superior is excluded by the express terms of the guarantee and, secondly, those

Chiefs whose Sanads contain no such stipulation." Jaora says with regard to the ones dealt with here they all fall into Aitchison's second class, where the suzerain is allowed to interfere, *his interference not* being excluded by the terms of the guarantee Sanad.

In 1907 the Thakur of Khojankhera died and during the subsequent minority the estate was taken under management by Jaora. The Political Agent was informed of the fact (letter No. 154, dated 11th March, 1907). Soon afterwards the widow of the Thakur moved the Political Agent to entrust the management of the estate to another Thakur, but Jaora (letter No. 212, dated 13th April, 1907) pointed out to the Political Agent that the established procedure in regard to a feudatory was for the suzerain to manage the affairs of an estate during a minority, and that therefore he ought not to interfere. The Political Agent (No. 4655, dated 23rd November, 1907) differed and said that in the case of a guaranteed estate it was not usual for the suzerain Durbar to manage during a minority. The Durbar in reply (No. 172, dated 20th April, 1908) cited a number of cases in which it had managed estates during minorities, although they were guaranteed, and during periods when the Thakur had got the estate into financial embarrassments But the Political Agent insisted on his view that the Durbar must always get the prior sanction of the Political Agent before taking over the management of a guaranteed estate I need not read the papers because I have given you the principle that is involved You will find that the documents bear out what I have said.

Then the next one I want to take is the case of Rewa (page 1023). It is difficult to take this one very briefly, but I am going to ask the Committee if they would be so good as to accept my points about it, and then read it through themselves. You will remember Rewa has a very special treaty of 1812 (Aitchison, Vol. V, page 238). The dominant article for this purpose is quoted· "The Raja of Rewa being the acknowledged sovereign of his own dominions, the British Government will not consider itself entitled to take cognizance of any complaint which may be preferred to it by any of the relations, subjects, or servants of the Raja, who on his part shall not possess a claim to the aid of British troops for the support of his authority within the limits of his dominions." Before instances of interventions are taken up it will be well to note that the Rewa State contains several feudatory Estates The Chiefs of these Estates are known as Thakurs or Illakadars. They were brought under the suzerainty of the Rewa Durbar either by conquest or by a voluntary subordination of the Chiefs themselves There are still others who are grantees of the Durbar and, as such, subordinate to the Durbar To the last category of grantees belongs the Thakur of Chandia He is not a guaranteed holder; there is no Government guarantee at all. He complained to the Political Agent upon the Durbar taking steps to recover arrears of Malguzary, that is, revenue. The Political Agent intervened and mediated a settlement by which the Durbar was compelled to promise not unnecessarily to trouble the Thakur while he remained loyal and obedient

Another case was the Thakur of Naigarhi In 1897 from the letters of the Political Agent himself it was plain that this Thakur was

incompetent, disobedient and a source of danger to the State The Maharaja got the Thakur to come to Rewa and was strongly advised by the Political Agent (private letter dated 10th August, 1897) at the time, who said that the A G.G. backed him, to keep him there and to treat him fearlessly; but within a month the Political Agent (letter dated 3rd September, 1897—no reference quoted), on the instructions of the A.G.G., told the Maharaja that he must pardon the Thakur unconditionally and give him another chance, the A G G having been approached by relatives of this Thakur The Political Agent did not pretend that he had changed his own views, but that the orders were given by the A.G.G. It is stated on pages 1023 to 1025, and I venture to submit it is a very bad case The Political Agent says (further letter dated 3rd September, 1897): "No one denies that the Thakur has behaved extremely badly as regards his famine arrangements and that it was with some difficulty that he was induced to come into Rewa; also that his general administration may be very inefficient and not up to the standard of other parts of Rewa" Of course, in a case like that, if the Political Agent intervenes and prevents disciplinary measures being taken, it is impossible for the Ruler to keep up his authority

Then the Raja of Singrauli is another case There were two interventions in his case The estate was made over to Rewa by a former Raja in 1819 Before 1882 there was a case of disloyalty by this Raja and some of his rights were taken away. Until then the Raja was always told by the Political Agent that he could only look to the Durbar and that Government would not interfere In 1882 he was given a lease granting him zemindari rights in his estate, but all jurisdiction was reserved to the Durbar. In 1905 this Raja, without approaching the Durbar first, sent a petition with regard to his grievances to the Political Agent. The Political Agent (No. 1150, dated 11th April, 1905) then wrote to Rewa that he seemed to have a strong case, and made suggestions Rewa (No 4110, dated 23rd July, 1905?) objected to the Political Agent making suggestions The Political Agent (No 2645, dated 15th July, 1905) then replied that the Raja of Singrauli thought that circumstances compelled him to seek an intervention of the officers of Government, and that being so, he did not think exception could be taken to that course, and he did not think the A G G would approve of the line taken by Rewa. The Durbar was of opinion that the Raja ought to come to Rewa to meet the Maharaja, but the Political Agent (D O letter, dated 17th July, 1905) said that he could not persuade him to come Finally the A G G decided to make no order There you get an intervention undermining the authority of the Maharaja, and nothing done in the end In 1909 this same Raja approached the Government through the Government of the United Provinces with a completely new set of grievances, whereupon the Government of India asked the A.G G. to report The Maharaja of Rewa protested that before going to the Government Singrauli ought to have laid his grievances before the Rewa Durbar and pointed out that none of th grievances mentioned in his petition to Government had been mention in Singrauli's earlier petition, and that Rewa had never heard them Then the matter dropped In 1908 the same gentleman duri famine disobeyed the orders of Rewa to make arrangements for t relief of his rayats Rewa warned him that the Durbar would ha

to start relief works at his expense and realise the cost by attaching a village. Rewa (No 1016, dated 20th May, 1908) then informed the Political Agent of what he had done, because he expected Singrauli, after previous experience, to go to the Political Agent. On that the Political Agent wired (23rd May, 1908) to Rewa to wait, and then wrote (D.O letter, dated 23rd May, 1908) saying that Rewa's action would not meet with the approval of the A.G.G.

Then, Sir, Rewa *gives some cases about non-feudatories*, simply subjects One was about a contractor for conveyances on the road The Political Agent lives at Satna, at a distance of 31 miles from Rewa Before 1917 a contractor used to run mail carts between the two places To-day there is a motor service. The contract used to be a five-yearly one. In 1902 the highest bidder for the contract was a new contractor, and he got the contract, but the Political Agent and the Agency Surgeon were inconvenienced on a journey and the Political Agent (dated 8th June, 1903—no reference quoted) wrote letters to the Durbar saying that the Durbar was bound to ask the advice of the Political Agent before making such a contract. Now, Sir, that cannot be right.

In 1903, the late Maharaja, according to the ancient custom of Rewa, imposed a Daijawan cess on State servants; that is a cess on the marriage of a sister or daughter of the royal family. Amongst others, *it fell upon the servants of the Medical Department.* The Agency Surgeon was head of the Medical Department, owing to his having continued in that capacity after a minority administration. Accordingly the Political Agent and the A.G.G. took up the matter and urged the Maharaja *to drop the cess on the Medical Department* (No. 2516, dated 22nd July, 1903). The Maharaja had the courage of his opinions and held out, and finally the A.G.G. gave in. They are all cases of detail but all cases of real importance in the working of the administration of a State

Then the next case, Sir, is Udaipur (page 1037). This is the Magra district. The general facts about Udaipur are known to the Committee After the Treaty of 1818 (Aitchison, Vol. III, page 30) order was restored in the State to a large extent and even the hill districts were brought under control. But these tracts and especially the part called Bhaumat had become so unmanageable at the time that "it was found that without the constant supervision of British officers permanent peace could not be restored Accordingly it was proposed in 1828 to raise a Bhil Corps"—you remember the facts about that from the Merwara case—"the civil control of the district was left with the Maharana." (Aitchison, Vol. III, page 13.) From the foregoing quotation it is quite clear that the stationing of the Bhil Corps was intended for the pacification of the country and had nothing to do with its civil administration or control. By securing that the management of the 'Magra Taluga' shall be subject to his "advice and consent" the Maharana sought to exclude the exercise, against his own wishes, of British influence in the affairs of those districts. Such reservation of administrative control necessarily followed from the Treaty of 1818. The Resident, Mewar, wrote to the Durbar in 1838 (Kharita, dated 7th July, 1839); "The Bhumias of Panarwa, Ogna and Sarvan have expressed that their ancestors used to serve the Mewar State and obey Durbar's orders With that idea they

have made a written request for Police outposts being established in that territory and their Pattas being administered by the Durbar in return for services which they promise to render faithfully to the Durbar like their ancestors. I have reported the matter to the higher authorities Now sanction of His Excellency has been received to the effect that all the three Bhumias may continue to render service to the State as heretofore. . " After this an agreement was written and signed by the Bhumias of the Magra district of which Bhumat is a part. By this agrement the Bhumias acknowledged the Durbar's suzerainty and placed themselves completely under its control Then under Clause 11 they agreed that "if a grassia of any other village comes to our village we shall not allow him to create a fracas but report the fact to the Durbar for orders" and so on—in effect accepting the complete control of the Durbar That was in 1837. Another important fact which establishes the Durbar's suzerainty over these Bhumias is the restoration of Joora by Lord Auckland in 1838 At the time of the pacification of the Magra district by the British Government in 1828 the refusal of the Rawat of Joora to deliver certain offenders led to the sequestration of that estate by the British Government In 1838, when this estate was made over to the Durbar, Lord Auckland observed in his Kharita (dated 22nd May, 1838) that "the estate of Joora which anciently acknowledged the supremacy of Udaipur is now again committed to the charge of Your Highness, as I am convinced that the happiness of the people, the prosperity of the country generally, and the repression of robbery and outrage will be best attained by this arrangement"

Nearly two decades later (1st April, 1853), when the Rana of Panarwa approached the Political Agent for the settlement of certain disputes with the cultivators of the village of Manipur, the Political Agent (No 38, dated 1st April, 1853) forwarded the papers to the Prime Minister of Udaipur for disposal and in the course of the forwarding letter observed: "At the same time I write that I have no business to interfere with the case *His Highness may do whatever His Highness likes as he has got all the authority*" And in a subsequent communication (dated 28th April, 1853—no reference quoted) relating to a succession dispute between claimants to the Panarwa estate the Political Agent wrote to the Durbar, "I cannot interfere in the affair. I am always keen to abide by the wishes of His Highness His Highness is at liberty to make arrangements regarding Panarwa as he pleases."

On the death of the Maharana in 1852 the Bhumia Nahar Singh of Sarwan offered his allegiance to Idar and got a police station of that State established in his Jagir He also refused to pay the Chha Anni tribute to the Durbar of Udaipur Captain Brook, the Superintendent of this State, thereupon issued a Parwana (dated 7th May, 1852) to him in which he wrote: "You are therefore ordered to dispense with the officials of the Police Station of Idar and in accordance with the old custom pay the Chha Anni due to the Mewar Durbar to the officials of the Udaipur State. You are further asked to act in consultation with the Mewar Police officers You should not disregard this or make any fuss. The village of Sarwan is under the jurisdiction of Mewar. You should therefore always obey the orders of the Mewar Durbar with the least evasion or objection whatever." But gradually

and insidiously the rights of the Durbar were encroached upon by British officers, and in 1895, in spite of the Durbar's protests, the succession to the holding of Jawas was determined by the Agent to the Governor-General and only formal recognition by the Durbar was asked for. In the same year the Durbar were asked to produce documents in support of their claim to exercise jurisdiction over the *Thakurates of Newara, Patya and Sarwan—the one we have just been* reading about They explained (Letter dated 12th April, 1896, to the Resident) the whole history of the question and recalled the Agreement of 1838, written by the Bhumias, which proves that "The Mewar Durbar have all powers of suzerainty over Bhomat in administering the country and recovering Durbar dues from the Bhumias. The Bhumias and their people are in every respect under the surveillance of the Mewar Durbar." This had the desired effect and the Resident, Mewar, communicated to the Durbar (dated 11th August, 1897) that "the A.G.G Rajputana, after a perusal of the old records, has decided that the Thikanas in question have doubtless been under the surveillance of Mewar Chiefs and that the Mewar Durbar have sole powers to deal with matters of these Thikanas independently, being also responsible for the peace and disorders therein." It was hoped *that* this question was settled for good. That, Sir, was in the year 1897.

The Raiwat of Jawas died in 1921, and the question of succession to the Estate was decided by the Durbar. One of the claimants memorialised the Government of India against the Durbar's decision. The Government (Letter No 4036, dated 11th November, 1921) thereupon sent a questionnaire to the Durbar for reply. The Durbar dealt with the question at length and gave reasons justifying their decision. They also protested against the interference of the Government of India in interesting themselves in affairs which were the Durbar's exclusive concern. Of course, 1921 was a very critical year for Udaipur. The Government of India did not upset the Durbar's decision at the time but waited till 1923, when they handed to the Durbar (16th October, 1923) a set of succession rules which they had framed in respect of these Feudatories of Bhomat Rule I laid down that "in all cases of adoption or succession, whether of a natural heir in the direct line or otherwise, a report will be made by the Chiefship direct to the Durbar" Rule II read that "the Durbar on receipt of such report will consult the Resident and no orders will be passed until his concurrence has been obtained." This was going back upon *all the Treaties, Agreements and long-established usage and practice.* The Durbar's Minister in personal conversation and in writing (dated 25th March, 1924—no reference quoted) made it known to the Resident that the Durbar considered the rules unnecessary and novel and an encroachment on their suzerain powers over their Feudatories. The Resident said in reply (No 986, dated 28th March, 1924) that the Government of India had decided on the procedure which I communicated to you on October 16th, 1923 . . . and which is therefore the procedure that will be adopted in those cases in future unless the Government of India alter their decision. It has not, however, been suggested to them that they should do so." The Durbar (Letter dated 31st March, 1925) thereupon expressed their surprise and protested against the encroachment upon their sovereign rights and requested

the Government of India to cancel the succession rules which they had promulgated The Resident replied (No. 1497, dated 8th June, 1925): "The Government of India regret that they are unable to accede to the Durbar's request for the cancellation of the rules regarding the recognition of succession in the Mewar Bhumat" The Durbar have thus been ousted from the exercise of their sovereign rights in their own territory This has been explained to the Government in a communication (dated 24th July, 1928, to the Resident, Mewar) which the Durbar have addressed to them

The last case, Sir, is Wankaner (page 1051) Wankaner, as you remember, is one of the Kathiawar States, close to Morvi. Now, Sir, this is an interesting little case. The facts are very clear I forget what the correct name for them is, but there were some pieces of land inside the State of Wankaner which were owned by the Ruler of Morvi not in sovereignty but as Jagirdar, as an ordinary land-owner, and the occupiers of those lands were under obligation to pay certain revenue or rent—whichever is the correct word--to Morvi

Chairman · That has been disputed for a hundred years We need not go into that.

Sir Leslie Scott I gathered it was in dispute, that was the reason I was so careful The relationship apparently is uncomplicated by any other relations entering in at all Morvi contends that the State of Wankaner ought to pay Morvi and collect from these holders, or, alternatively, that the State of Wankaner ought to guarantee payment by these holders, and Wankaner complains that the Government have intervened in the matter It is not exactly comparable to the other cases because a third party is brought in, but that is the point Some Bhayats (feudatories) of Wankaner State paid for a number of years "Pal" (or rent charged) to the Morvi State The Bhayats having stopped payment, Morvi sought the intervention of the Political Agent on the ground that Wankaner was bound to realise the payment from its Bhayats and to hand it over to Morvi This obligation was repudiated by Wankaner, but the Political Agent refused to accept the repudiation unless Wankaner's freedom from liability in the matter was established by a decision in a political suit Wankaner therefore met the views of the Political Agent—though I do not think it was obliged to—brought the suit, and it was finally decided by the Governor-in-Council in Political Appeal No 8 of 1888 89 Relevant extracts from this Judgment are quoted as follows —

"Here the Pal was taken from the Girassias of Kotharia continuously for 34 years It seems to have been taken at an earlier period. It is said that Wankaner is not a State, bound by this payment on the part of its Bhayats holding Kotharia, because it was not aware of it The Assistant Political Agent has shown that it was aware of it in 1861 But the same ambiguous nature of the payment which on one side goes to support a claim as of a legally possible and approvable due reduces it on the other side to a right established by prescription merely against the group of persons who have habitually paid it. Such payments would not and could not in themselves give to Morvi any fragment of sovereignty over the payers in derogation of the sovereignty held and exercised by their own Chief

Sir Leslie Scott: If there had been a dispute between the two States, they would clearly have had a right to decide.

Colonel Peel: There was a dispute.

Sir Leslie Scott: If there was not a dispute, they would not have a right to decide.

Colonel Peel: There was a dispute somewhere.

Sir Leslie Scott: May I just recall it to you? In 1888 the Political Agent suggested that Wankaner should test the liability by bringing an action in the Political Court at Kathiawar. It did so on the request, though it is pointed out in one of the documents that it had no right to appear there as a litigant at all. If you look at the document signed by Sir William Lee Warner himself (Judgment of the Government of Bombay in Council in Political Appeal, No 8 of 1888-89) he says: "Morvi might have urged that a coercive power exercised *de facto* for so long had become a superiority *de jure* As it is, we have the bare fact of payment. This constitutes in Morvi's favour a right against the persons, but one to be enforced by legal process seeing that any pretensions to sovereignty ever put forward by Morvi had been abandoned It is the Girassias who are liable, not the State, though the State of Wankaner has been allowed to represent them in these irregular proceedings"—That is what I want to draw attention to, Sir—"The rights of the parties interested appear, notwithstanding the irregularities of the procedure, to have been effectually represented and thoroughly sifted. The only change necessary in the award of the Political Agent is to declare that the right of Morvi is one of an ordinary renter or charge-holder against a group of proprietors, and in case of default must be enforced accordingly." My submission is, that in the Judgment of this Political Court of the Government of Bombay, they disclosed no ground at all for supposing that Wankaner had assumed any kind of liability to Morvi.

Colonel Peel: They were subjects of Wankaner, were they not?

Sir Leslie Scott: Why should the State guarantee them?

Colonel Peel. Subjects of the State go to the Government of that State and ask them to get payment of the debt.

Sir Leslie Scott: You cannot tell what the origin of these payments is amongst these States, because you find patches of foreign territory, if you trace them out, had quite different historical origin; they got absorbed in the State in which they are enclosed and became part of the territory of that State in the course of time in the eighteenth century.

Colonel Peel: I do not understand where they come in; was there no dispute between the States?

Sir Leslie Scott: I am saying quite definitely, and this is the relevance of the thing, there was no dispute between the States at all; there was merely an inability by Morvi to get payment of its just debts from certain persons, and the Political Department had no right to intervene and order Wankaner State to act as debt collector for

Morvi That is the point. The payment was due from those people to Morvi.

Colonel Peel: The Government of India had a right to step in there, and say the thing was wrong.

Sir Leslie Scott: No, they had no right to step in, none at all I think they say it here quite clearly, at any rate, I submit it If you would not mind reading the documents through carefully I think you will see the position I take up is borne out by the documents—that there is no ground disclosed at all to indicate any liability on the part of Wankaner to guarantee the payment or to collect the payment, and that there is no request by Wankaner to the Government which justified the Government in intervening between it and people who were its subjects, and make the State tell its subjects they have got to pay to somebody else. It is not the business of the State That is the point, Sir. It is not as if Morvi actually put forward to the Government the claim that Wankaner was under a liability If that had been done, then the procedure of the Political Courts could have been used.

Colonel Peel. We do not know exactly what happened, do we? Supposing the facts are as you state, then I see your point.

Sir Leslie Scott I cannot say that it is a case of supreme importance, but it just throws a little light on one aspect of these things. "Leave them alone" is the principle that, I suggest, is illustrated by the case.

Chairman: That concludes that point

Sir Leslie Scott: That is the end of that head, A (a) (v)

Chairman: Is it worth beginning a new heading now?

Sir Leslie Scott: I do not know that it is.

Chairman: We will sit on, if it is any use, but if it is a convenient point to adjourn, we will adjourn.

Sir Leslie Scott That will suit me very well May I make one remark, which it has been suggested to me that I ought to have made, that in the last case which I was dealing with, the State of Morvi was really in the position of a subject enforcing purely private rights

Professor Holdsworth: That is quite true.

Chairman: It is not a dispute between two States?

Sir Leslie Scott No

Chairman: Had it been a dispute between two States, there would have been a case for intervention.

Sir Leslie Scott Quite so.

Minutes of Evidence given before the Indian States Committee at Montagu House, Whitehall, S.W.1.

Thursday, 1st November, 1928, at 3.30 p.m.

PRESENT:

Sir HARCOURT BUTLER, G.C.S.I., G.C.I.E., *Chairman.*
Colonel The Honourable SIDNEY C. PEEL, D.S.O.
Professor W. S HOLDSWORTH, K.C.
Lieutenant-Colonel G. D. OGILVIE, C.I.E., *Secretary.*

Their Highnesses the MAHARAO of CUTCH and the MAHARAJA of NAWANAGAR.

The Right Honourable Sir LESLIE SCOTT, K.C, M.P., appeared on behalf of the Standing Committee of the Chamber of Princes

Sir Leslie Scott· We got to the end of A (a) v on Tuesday and the next subject deals with the curtailment of Rulers' powers—" Deposition of Rulers and compulsory modification of their powers.". There are only one or two under this head in the printed volume, though the subject is one of great importance and familiar to the Committee. Have you copies of the Opinion of Counsel handy (Appendix " P.")? Would you allow me to read paragraph 6, sub-paragraph (b) under the head of " Paramountcy." " The gist of the agreement constituting paramountcy is, we think, that the State transfers to the Crown the whole conduct of its foreign relations—every other State being foreign for this purpose—and the whole responsibility of defence; the consideration for this cession of sovereignty is an undertaking by the Crown to protect the State and its Ruler against all enemies and dangers external and internal, and to support the Ruler and his lawful successors on the throne These matters may be conveniently summarised as and are in this Opinion called 'Foreign relations and external and internal security.' We can find no justification for saying that the rights of the Crown in its capacity as Paramount Power extend beyond these matters"—Now, this is the important passage: " The true test of the legality of any claim by the Crown, based on paramountcy, to interfere in the internal sovereignty of a State must we think be found in the answer to the following question: 'Is the act which the Crown claims to do, necessary for the purpose of exercising the rights or fulfilling the obligations of the Crown in connection with foreign relations and external and internal security?' If the claim be tested in this way, its legality or otherwise should be readily ascertainable These matters do not fall within the competence of any legal tribunal at present existing; but if they did, such a tribunal when in possession of all the facts would find no insuperable difficulty in deciding the question."—That, of course, means that ultimately it is not a matter for the discretion of the Crown, but a matter that depends upon the actual facts of the case.—" We do not propose in this Opinion to discuss particular cases in which a claim

by the Paramount Power to interfere with the internal sovereignty of a Ruler would be justified on the principle which we have enunciated There are certain cases, as for example such misgovernment by the Ruler as would imperil the security of his State, in which the Paramount Power would be clearly entitled to interfere. Such an interference would be necessary for the purpose of exercising the Crown's rights, and fulfilling its obligations towards the State. But in this Opinion we are dealing rather with principles than their application: and an enumeration of cases, in which interference would appear to be justifiable, would be out of place. It would be equally out of place for us to try to particularise as to what acts of interference would be proper, in cases where some amount of interference was admittedly justifiable, beyond saying that the extent, manner and duration of the interference must be determined by the purpose defined in our question above "—That is, whether the act is necessary for the purpose of exercising the rights or fufilling the obligations of the Crown in connection with foreign relations and internal and external security.

Bearing in mind those legal views there expressed, which I submit to the Committee as accurate legal views, I want you to look for a moment, if you will, at these cases which are here There are only four or five of them printed here The best one to take, I think, is the Kashmir case (page 1137). In 1889 the then Maharaja was deprived of his powers I think you are familiar, all of you, with the broad facts relating to the matter. It is stated in Aitchison that he voluntarily resigned all active participation in the government of his State Of course, if it was a purely voluntary resignation, and he invited the Government of India to take charge, then to the extent of the invitation the Government would be entitled to do so, but how far in circumstances of that kind it is justifiable to regard the resignation or partial resignation of a Ruler as really voluntary is a matter which must depend upon the facts of the individual case. In the case of Kashmir, I am making no submission as to what the actual facts were at the time when the administration was taken over by the Government of India in 1889 The broad point is, that the Government assumed complete control In 1889 His Highness the late Maharaja was deprived of his powers as Ruler. The Government of India appointed a Council which was to carry on the administration of the State under the orders of the Resident The following were the instructions issued by the Government of India (letter dated 1st April, 1889) to the Resident —" I am further to request you to make the Maharaja and the Members of Council thoroughly understand that although the Council will have full powers of administration, they will be expected to exercise these powers under the guidance of the Resident They will take no steps of importance without consulting him and they will follow his advice whenever it may be offered" After the Maharaja was deprived of his powers a State Council was appointed to carry on the administration under the order and subject to the close supervision of the Resident The Rules and Regulations of the Council are set out as Exhibit A (page 1139) of which Rule 21 is the most important: " The Resident shall be the final referee in all matters and may veto any resolution passed by the Council or suspend action thereon pending further explanation."

Following on the assumption of complete authority in State affairs by the British Government, the Frontier Agency was re-established in Gilgit. The Political Agent gradually took over the control of affairs in the Frontier and excluded the State administration from having a voice in it. The area was declared to be under the suzerainty and not the sovereignty of Kashmir. In the period immediately following the assumption of authority by the Resident many arrangements were entered into which seriously diminished the authority and prestige of the State Such were the restrictions laid down by Colonel Prideaux' letter on the question of jurisdiction (1891)—which I have already dealt with—the transference of the Post Offices (1894), the amalgamation of the Telegraph Lines (1894)—a similar transaction—the restriction with regard to the possession and sale of arms in Jammu and Kashmir and the visitors' rules. In 1896 it was laid down that the Maharaja may send for the proceedings finally disposed of by a Member in his Chambers, and, if he see reason for not concurring in the decision or order given, may refer the matter to the Council. The rule, however, was not to apply to regular revenue and judicial cases. The supplementary rules which were framed to give effect to this additional power of the Maharaja stated that Members should submit a synopsis to the Maharaja, and also "That it shall be competent to a Member-in-Charge of a Department *to reserve any question for an expression of the views of the Resident*" Under that system so inaugurated the Resident in fact acquired complete control of everything within Kashmir. That system continued up to 1905. The State Council was abolished on the 26th October, 1905, and its administrative powers were transferred to His Highness the late Maharaja. The Maharaja was, however, to exercise his powers under the advice of the Resident; and it was stipulated that no step of importance should be taken without consulting the Residency. The constitution established under this system provided: (1) That the advice of the Resident should be followed whenever offered, etc. I need not give it in detail. The complete control of the Resident was preserved. Slight modifications were introduced in the above arrangements twice before the final grant of full powers in 1921. In 1914 enhanced financial powers were given to the Maharaja; but it was provided that no charge should be sanctioned unless it had been agreed to by the Accountant-General, who was invariably a European officer of the Government of India. In 1918 these powers were further extended. In 1921, full powers were restored to His late Highness, on giving a confidential undertaking to accept the advice of the Resident whenever it is offered on State matters, and to inform the Resident of any important changes to be made in the existing rules and regulations and the laws of the State, and in regard to frontier matters. His Highness administered the State, after restoration of full powers, through a Council of which he himself was President. Maharaja Shri Pertab Singhji died in September, 1925, and was succeeded by His Highness the present Maharaja, who, though no longer subject to any restriction on his ruling powers, has to accept in practice the rulings of the Government of India, and the arrangements sanctioned by them during the period from 1885-1921, contrary to State rights and interests, when they practically were in charge of the State administration. That story, told shortly, amounts to this.

Even assuming a voluntary request in 1889 by the then Maharaja to the Government of India to take charge, or assuming, though I submit there is no evidence of it, a state of affairs which would have justified the deposition on the ground of internal security of the State being endangered, that régime was continued from 1889 right down to the death of the Maharaja in 1925, and has been allowed, so to speak, to continue even after the end of that régime, and subsequently to the accession of the new Maharaja. My submission is that it was wrong in two broad ways · Firstly, that you must assume that the original consent was a consent solely for the purpose of conducting the régime in accordance with sound Kashmir principles, customs and traditions, and that no changes of a radical kind would be justified by the consent given by the Maharaja at that time to the Crown to supervise the administration. It must continue to be administration of the State in accordance with State Law and State traditions, and that the same principles ought to be applied by the Government to an administration of that kind as to the Minority administration. I will refer to the Minority administration principles in connection with the Resolution of the Government of 1917, when I come to the next head in the classification Secondly, that everything done during such an administration must, as a matter of obligatory law, be done in such a way as to enable the successor to find his State in the same position as regards its powers and privileges as it was in when the Government of India undertook the administration. Those are the two broad principles, which I submit were both transgressed in regard to the administration of the State of Kashmir The breach of those principles was illustrated, in my submission, very plainly by the introduction of the wholly external system of jurisdiction in 1891, which we dealt with under the earlier head of the classification. As it seems to me, it is not necessary to trouble you with the details The case speaks for itself, and therefore, I leave it at that.

The next one is the State of Tonk (page 1141), which I will take very shortly That State, as you will remember, originated in a grant from the British Government in 1817 to a General of Holkar who had rendered certain valuable services In consequence the Government took the State of Tonk under its protection, but the State had complete powers. Amongst its tributaries the State of Tonk had the Thakur of Lawa In 1867 there was an attack on the uncle and followers of the Thakur of Lawa, and various people were killed *An investigation* took place, and the Governor-General came to the conclusion that the Nawab was himself responsible. As a punishment the Government did the following things · (1) They deposed him, (2) They banished him from the State and placed him under surveillance at Benares, with a limited annual allowance, (3) The salute was reduced, (4) The number of troops maintained by the State was reduced, and (5) The Thakur of Lawa's holding was sequestrated, and was declared to be a separate chieftainship and placed under the protection of the British Government (Aitchison, Vol III, page 100) It is to be noted that the Thakur of Lawa used to pay to the Tonk State an annual tribute of Rs 3,000 This the British Government transferred to themselves. The point of this case is that the full evidence taken on the spot had established the personal guilt of Nawab Mohammed Ali Khan, who was the

then Nawab. His guilty conduct possibly deserved the sentence of deposition, assuming such sentence to be within the prerogative of the Paramount Power; it possibly also deserved the deportation of the guilty Nawab to Benares and his being kept under surveillance there. But it is not comprehensible how the State and its future Rulers deserved any punishment by the prohibition for all time of determining the strength of their tributes. It is even more difficult to find any justification either for the escheat of Lawa from the State or for the transference by the British Government to itself of the tribute which Lawa used to pay to the Tonk State. The State protested against this Order, but both the Government of India in 1921 and the Secretary of State in 1923 declined to restore Lawa to the parent State. That raises a different question of principle to the one raised by the case of Kashmir, but it is one of very great importance. If we assume, as I submit is the position, that the fundamental obligation of the Crown to each State is to preserve the State and to maintain the continuity of succession of the ruling family of the State, it then follows that although the Crown may, in the event of the security of the State being endangered, have a right to intervene and even depose the then Ruler because he is endangering the security of the State, it does not follow from that right that the Crown is entitled to deprive the State, as a State, of any of its possessions or of any of its privileges My submission is that the Government of India have habitually failed to appreciate that limitation upon their powers To punish the State as distinct from removing the Ruler who, *ex hypothesi*, is a source of danger to the State, is to exceed any powers that they lawfully possess. You follow the point I am making?

Chairman: Yes

Sir Leslie Scott: I put it on this simple ground, that the real contract by the Crown is to protect and preserve the State. You may banish the Ruler because he is imperilling the security of the State, but that does not entitle you to punish the State and mulct it of its territory or of its rights. That is the point.

Then the next one is the case of Udaipur (page 1142). The Standing Committee have considered that case very carefully, and they have taken a very special line about it. In this Memorandum they have recited the various testimonials given by the Viceroys and others to his present Highness the Maharana of Udaipur during a succession of years, showing the confidence and the trust reposed in him. They have recited many of the acts of progress accomplished by him in regard to his State and the various improvements introduced, social reforms and otherwise. But they have not gone into the details of what happened in 1921. They have abstained from doing that quite deliberately. First of all, they recognise of course that you, as a Committee, are not in a position to make any recommendations as to a particular remedy. They felt that this was so important a case that it might be embarrassing to you if the facts were gone into in any controversial way, and therefore what they have done is to submit respectfully this broad point. Having regard to the character of the Maharana of Udaipur, as recognised down to 1921, and of the absence of any suggestion of danger to security being involved by any deliberate conduct on his part, they submit to you that the action taken by the Crown

in 1921 was not justified by any legal rights which had accrued to the Crown by reason of anything that had happened. In effect, they submit to you that the action taken was not only in excess of the occasion, but inconsistent with the fundamental obligation, illustrated in the last case of Tonk to which I have adverted, to preserve the State and to preserve the rights of the lawful Ruler of the State on his Gadi.

They have put before you their submission in a carefully considered paragraph which I just propose to read, and it is not necessary for me to say anything more, beyond this, that on their behalf I asked the Committee to read carefully the three pages containing the matter. Would you kindly look at the paragraph (page 1144) "It was against this Prince, singled out for marked honour by the King-Emperor, the recipient of innumerable expressions of friendship and esteem from successive Viceroys, and the proud possessor of his subjects' veneration, that the Government of India proceeded, in July, 1921, to take peremptory measures which resulted in the signal and public humiliation of His Highness. This action, it is submitted, involved repudiation *of treaty rights and departure from the lines of policy definitely prescribed* for the regulation of the affairs between the Government of India and the Indian States, laid down in the above-mentioned pronouncements. It naturally caused general misgiving in the minds of the Ruling Princes of India The Standing Committee of the Chamber know how deeply this misgiving was felt, and how general is the desire of their order to see what they believe to be justice done to His Highness of Udaipur But after careful consideration they have decided not to put the detailed evidence of the case before the Indian States Committee Therefore they content themselves with drawing attention to the principle involved; they definitely hope that the Paramount Power may see its way to give them and His Highness complete satisfaction." I am sure the Committee will appreciate the feeling that is actuating the Standing Committee in dealing with this case in that very restrained way

There are two other cases relating to this head to which I want to refer particularly, one is Barwani (page 1129) This State, as you probably remember, is a State of about 1,200 square miles, and 120,000 population. "The Ranas of this State are Sisodiya Rajputs of the Udaipur family, who separated from the parent stock about the fourteenth century. From the beginning of the eighteenth century the power of the Ranas of Barwani gradually declined They did not, however, become tributary to any of the Malwa Chiefs Mohan Singh was Rana at the time of Sir John Malcolm's settlement of Malwa He was succeeded by his son, Jaswant Singh." The above quotation from Aitchison (Vol IV, pages 460-1) shows that at the time of the advent of the British in Central India the State of Barwani was an independent principality, which had never been subjugated by any of the Maratha Chiefs, nor was it ever conquered or subjugated by the British, its relations with that Power having throughout been friendly No treaty was ever concluded between the British Government and the Barwani State, nor was any sanad ever given to the latter So that you have a case here very similar to Tripura down to the year when Tripura received its sanad, which I think was 1904 My submission is that the position is precisely the same in law, having

regard to the acceptance by Barwani of the Paramountcy of the Crown, as it is with one of those Treaties where the Crown undertakes to observe the absolute authority of the Ruler of the State within his dominions, and in return the Ruler assigns all foreign relations to the Crown—the position of a full-powered State. By the Treaty of Mandsaur (Aitchison Vol. IV, page 197) the authority, as you will remember, of the British Government was established in Central India A perusal of the correspondence will show that the British Authorities of the time recognised the Ruler of Barwani to be an independent sovereign Ruler, with complete civil and criminal jurisdiction within his State. This continued to be the status of Maharana Mohan Singhji of Barwani throughout his life On Maharana Mohan Singh's death, in 1839, his sons, being minor at the time, the management of the State was placed in the hands of the senior Maharani, Raj Kuari, but subsequently, in 1844, owing to the latter's incapacity, the Political Agent took charge, and handed the management to the Junior Maharani. I am going to skip a little. In 1858, the son, who had long before come of age, was given ruling powers. In 1860 he was deprived of them. In 1873 he was restored to power for one year, but as a matter of fact continued till his death on probation under conditions strictly limiting his powers. He died in 1880 He was succeeded by a brother who was not allowed to exercise his ruling powers In 1883 that brother was allowed to take charge of one district as a test, but remained till his death in 1894 under the control of the Resident Then in 1894 the State was again placed under the administration of a Superintendent during a minority. When the present Maharana attained his majority he was invested with full ruling powers except that he was deprived of some of his criminal jurisdiction. In 1916 the Government issued a Sanad giving him certain powers, subject to certain conditions. He was not allowed to exercise jurisdiction over Europeans and Americans and so on. That was only for his life. Then in 1921 a new Sanad was issued which was said to be hereditary but provided again that the Government should have the prerogative of mercy in all sentences of death The right to try Government servants was excluded and so was the right of trial of Europeans.

Now that comes under the category not of depositions, of course, but of the limitations of the powers of a State without justification. You see, Sir, what really happened there was that there was a succession of minorities or administrations in the case of a completely full-powered State. In the end, although both of those conditions were of a temporary character, the Government permanently limited the powers of the State by a Sanad, or attempted to do so. The submission that the Standing Committee make is that once a State is a full-powered State it remains a full-powered State for ever unless it cedes any of those powers. The fundamental obligation of the Crown is to preserve all the powers of the State and it cannot, by Sanad or any other device, cut them down. That is the point we make there and it illustrates how the mere accident of a succession of minorities, with a general impression: "That is a State that we can supervise and manage as we like" tends to make the Government assume that it has got powers that it does not really possess. That is the point illustrated by that history. My submission is that however *bona fide* the view of the Government may be that it is entitled to do these things that is no

criterion and is *nihil ad rem.* If the State had got full powers nothing in this world entitles the Government to cut them down except a cession by the State, and a cession by the State when it is in the control of a full-powered Ruler.

Professor Holdsworth: But suppose the powers of the Ruler are restricted for some reason or other, for instance, on account of some personal misconduct; let us suppose that state of things. You admit then that the powers of the Ruler can be restricted in that way, do you not?

Sir Leslie Scott: Assuming the right to restrict, then the powers of that Ruler for a limited time can be restricted.

Professor Holdsworth: Now supposing that Ruler dies and leaves an heir who, obviously, from his past history is not likely to be a very successful ruler, is it not open to the Paramount Power to say, "You cannot succeed" or "You can succeed under the same restrictions."

Sir Leslie Scott: I should say most certainly not.

Professor Holdsworth. Even though it may be in the interests of the State?

Sir Leslie Scott It depends what you mean

Professor Holdsworth It may be he is a person whose character is such that you would not like to trust the State to him.

Sir Leslie Scott. Let us take the case of a mentally defective.

Professor Holdsworth. I am not speaking of a mentally defective, I am taking a person whose past history is such—he might be extravagant or something of that sort—that obviously you would not care to trust the State to him. Would you say you had a right to let him in with restricted power or not?

Sir Leslie Scott· Yes, without doubt.

Professor Holdsworth That is to say, you can carry on the restrictions?

Sir Leslie Scott It may be he will do something which will lead the Paramount Power to intervene and depose him, but the Paramount Power is not entitled, in my submission, to act until there is a danger to the security of the State The Paramount Power has no right vested in it to supervise the general good government of the State. There are lots and lots of pronouncements by Governors-General to that effect: that the Paramount Power has no right whatever because it disagrees with the methods of administration followed by a State, even though it thinks there may be a certain amount of misgovernment—it is not entitled to intervene unless the peace is in danger. That is the limiting factor in these matters. I perfectly appreciate that if you regard the matter from the point of view of an omniscient and charitably minded power and regard the Rulers of the States as children, naturally you would want to look after them and bring them up in the way they ought to go But that is not what we are concerned with, that is entirely irrelevant to any question which this Committee has to deal with, in my submission, the rights of the States are to govern themselves and, up to a point, to misgovern themselves if they choose. The Paramount Power has no right to intervene until security

is in danger to an extent which may make imminent the performance of its own obligations to come in and protect the State.

Professor Holdsworth: You may cure, but you cannot prevent.

Sir Leslie Scott: Certainly, I accept that form.

Colonel Peel: Do you think the Paramount Power has no kind of responsibility for the subjects of the State?

Sir Leslie Scott: None

Colonel Peel: None? Its promise to protect the Ruling Family, protect the territory of the State, does not carry with it any obligation whatever to see any sort of good government within the State?

Sir Leslie Scott: None whatever. Each State is a separate country with *a separate sovereignty under contractual arrangements with the* Paramount Power, and the legal position is the only one by which these questions can be decided As I have said, and I repeat it, I am only anxious that there should be no misapprehension on the subject. Every single one of the Princes recognises the personal obligation of good government and is perfectly willing to make any reasonable arrangements in the future, but they do not recognise the right of the Crown to intervene, without their leave, unless the security of the State is in danger. They admit that, in that rare and unlikely event, there is a right, but the right does not arise otherwise, and I venture very respectfully to submit that it is extremely important, in order to arrive at any true appreciation of the position, to think the problem out on definite clear principles. I appreciate as much as anybody the temptation to loose speaking and to say "Oh well, in these circumstances there must be some sort of general duty of supervision to prevent misgovernment." It is the sort of thing, when one thinks about it, one naturally thinks may be fair, but I submit that there is no ground for it at all; I am perfectly frank about that

Professor Holdsworth: Now, we know that in the past the Paramount Power has intervened to suppress practices like suttee and female infanticide.

Sir Leslie Scott: If you look at it, you will find they suppressed it by getting the consent of the States to do it themselves

Professor Holdsworth: Supposing a possible thing, supposing a State resolved that they rather liked these practices and re-introduced them; would that be any justification for the Paramount Power to intervene?

Sir Leslie Scott: In my view, no. The history of the suppression of female infanticide and of suttee and of slavery has been that the States have consented in the great majority of cases to take the steps themselves In some cases the Crown has had an opportunity of imposing conditions of the kind, because the Crown has been in a position either to escheat the estate or to depose a Ruler, or for one reason or another has been in a position accidentally to dictate terms, but with those exceptions, the abolition of those practices has been done by the consent of the States. Take the case of female infanticide in Kathiawar. The suppression of this practice was essentially done by consent. I have been very much struck going through the papers to find how many cases there have been where suttee and slavery both have been abolished by consent. I have sitting beside me two ruling Princes, who, in the

earlier stages of their State, had the practice of female infanticide—His Highness the Maharao of Cutch and His Highness the Jam Sahib of Nawanagar. Both tell me it was done by consent.

Professor Holdsworth: I only asked the question because I wanted to know whether you thought there was any right in the Paramount Power to put down this practice, I want your opinion on that.

Sir Leslie Scott: None: It is a moral question upon which the Crown has no right to intervene, and that is my answer on that perfectly frankly. I should like to say, if I may, interrogatively in answer, if there be such a right it must be a right which is capable of expression in some intelligible terms related to legal principles, and I can think of none. In considering that kind of question I recognise the temptation to think that there is such an obligation just as clearly as the Committee do. It is vital to remember that the Crown has contracted not to interfere within the States. These questions that you put to me are all matters of degree. We in England reprobate the practice of suttee; we reprobate the practice of female infanticide I was only this morning reading a number of documents contained in these printed volumes relating to the question of female infanticide and suttee Moral views about these things are essentially a matter of the time and place. We have not received from the States any general mandate to revise their morals.

Colonel Peel. You contend that the Paramount Power was not given any power of intervention in regard to a question of morals.

Sir Leslie Scott: I was assuming that you thought it was a question of moral. That is my respectful submission to the Committee. I do want very much to emphasise that that particular question has no practical bearing because everything that is reasonable will be done by the States voluntarily. It is vitally important from the political and not legal point of view to remember that, that they are willing to enter into all kinds of reasonable arrangements once the Government negotiates with them.

Now, the last one is a very curious case in this sense, it contains so much material that the Standing Committee thought you ought to have it before you. It is the case of Aundh (page 1058) This is evidence that has come into the possession of the Standing Committee but is not evidence put forward by the State of Aundh itself. I want the particular attention of the Committee to this This is the case of a Ruler who was deprived of powers in 1907 and then was deposed in 1909. His uncle is at the present time the occupant of the Gadi, and the Standing Committee, of course, are not taking sides as between the present occupant of the Gadi and the ex-Chief, they are expressing no opinion whatever on any dispute between those two persons, but the facts of the case throw much light on the sort of questions you have to consider, Sirs, and we thought you ought to have them

The facts of the case are briefly as follows Gopalkrishnarow known as Nanasaheb, who was Chief of Aundh but was deposed in 1909, was installed on the Gadi of Aundh in 1905 upon the death of his father Succession in the State follows the rule of primogeniture Nanasaheb was not on good terms with his late father's Karbhari, Mr. Jacob Bapuji Israel, whose services had been lent to the State by Govern-

ment. This genteman was originaly a clerk in the office of the Collector of Satara. In the report made by Mr. Jacob to the Political Agent *before the installation of* Nanasaheb he had, unknown to the new chief, suggested that Nanasaheb's character and behaviour had been *such* tht it was advisable to impose terms upon him, e.g., that the young Chief should be obliged to give an undertaking that he would not appoint or dismiss any Karbhari without the previous approval and sanction of Government.

Professor Holdsworth: What does "Karbhari" mean—Prime Minister?

Sir Leslie Scott: Prime Minster. The same as "Dewan." It is the Western Indian word for "Dewan." This report has never been supplied to Nanasaheb in spite of his repeated requests for a copy, although it is referred to by the Special Commissioners, *who, as appears below*, subsequently tried him. The Chief was installed (Bombay Government letter dated 3rd October, 1905) subject to the condition that his Karbhari for the first five years shall be a person approved by the Political Agent. As a result of disputes *and differences between Nanasaheb and* his Karbhari the Political Agent heard from the Karbhari all kinds of allegations against Nanasaheb. The latter asked for his removal, but was refused (Bombay Government letter dated 21st December, 1906), and it is plain that there was serious friction between the two. Those two Exhibits Nos. 3 and 4 (Letters to the Political Agent—no references quoted) show very violent friction. In 1906 Jacob Bapuji complained that Nanasaheb had "instigated one Pirya Maung to murder him under pretext of committing a dacoity in his house." Mr. Arthur, the Political Agent, reported the matter to the Bombay Government and a Special Commission was appointed to investigate the charges The Senior Commissioner was a Revenue Officer, Mr. Logan, the Junior, a district judge, Mr. Kincaid. The charges laid before the Commissioners were that *the Chief* had committed two definite and specific criminal offences: (1) murder; (2) dacoity. There were no general charges of maladministration or incompetence of the Chief—no general charges of maladministration, he was charged on a pure criminal charge—and *the Chief had no reason to suppose that* he was arraigned on any such general grounds. The Commissioners open their long Report by stating in terms—now I want you to follow this Report of the Commissioners—that they had to try Nanasaheb *for instigating (a) the murder, (b)* the dacoity of his Karbhari. They state in the opening of their Report that they are satisfied that both charges have been "substantially" proved. To this they give a direct contradiction in the concluding passages, where they clearly indicate that they do not believe that the evidence is enough to substantiate the more serious charge. Then follows the astonishing remark, after hinting at extenuating circumstances, that, since the Chief's defence has been a bare plea of "Not Guilty" possibly he was not entitled to the benefit of any extenuating circumstances which might have been revealed in the course of the enquiry. The actual words of the Commissioners are: "We think that no worse motive than a desire to get rid of the Karbhari by some means or other need be imputed to him, and that even an abortive attack on the Karbhari's house would have satisfied him, provided it *frightened that officer into resigning his*

appointment. No doubt the death of the Karbhari might have been a pleasure; but we do not think it was the whole or even the main object, so far as the Chief was concerned, and if Pirya's earlier version of what happened at the interview in the tent is true, the Chief never personally enjoined it and may not have known that Balka had done so." That is the man who apparently did it. Well now, that is the only finding of the Court of any importance It is perfectly plain from that that there was no satisfactory proof of any instigation by Nanasaheb himself.

Colonel Peel: It is not a very high testimonial to the character of Nanasaheb.

Sir Leslie Scott: Please understand the complete aloofness and impartiality with which I am presenting this case to you I admit that there was some ground for trying him. Finally, it is plain that the Order of the Government was not of deposition, but only of suspension for five years, with an implied intimation that if the Chief behaved well during that period, his powers would be restored I want to refer you, if I may, to that one order.

Colonel Peel: Who was actually murdered in this case?

Sir Leslie Scott Nobody was murdered I have not got at the bottom of the facts of the case at all Would you turn to page 1094, Exhibit 22? You will see the point, Sir, in a moment. I want to give you the actual documents This is from the Collector and Political Agent to the Chief of Aundh (No. 6716, dated 16th September, 1907) "I am directed by Government to inform you that the Government of India, after perusing the Report of the Aundh Commission, which found that in January, 1906, you instigated one Pirya Laxman, a Mang, to commit a dacoity at the house of the State Karbhari, Mr Jacob Bapuji Israel, and murder him, and that in pursuance of this plot you caused the escape of Pirya from the Aundh Jail, and subsequently incited him, both directly and indirectly, to carry out the project, and after perusing my report as to your unfitness to administer your State, concur with the Governor of Bombay in holding that you should be deprived of your powers as a ruling Chief, subject to further report after a period of five years as to your conduct during that period. 2 As regards your further place of residence, in the opinion of the Governor in Council it is not desirable that you should return to Aundh or reside anywhere in the Satara or Poona Districts Government desires that you should reside at some station in close touch with responsible British officers. . " Now, Sir, I have not gone into the nature of the trial, I merely observe that the ex-Chief of Aundh, who was thus deprived of his powers, continued to assert his innocence of the charge of instigating to murder or dacoity, and I would observe this, that had the Government been satisfied that he was really guilty of that charge of instigating to murder, it is perfectly obvious that they would not merely have deprived him of his powers for a certain limited period of time, but would have deprived him permanently It is quite clear that they could not have regarded him as guilty, because they could not, had they done so, have contemplated the possibility of his return to the State as Chief, and my submission is that, having imposed upon him that order of a suspension of powers for a period of five years, subject to good behaviour, there

could not possibly be any further legal right at a later date, to take any further executive action by way of depriving him of his right to return to the State But that is what they did, two years later, in 1909. If you look at Exhibit 24 (Letter No. 5199/Conf. 49, dated *13th July, 1909, from Political Agent, Dharwar*) you see: *"I have* the honour to state that I have been directed by Government to inform you that His Excellency the Governor in Council has, on further consideration of the circumstances of the State, with the concurrence of the Government of India, come to the conclusion that it would be contrary to the interests of the people of Aundh to allow you to return *to power, or to entertain any hopes of such return. I am at the same* time to inform you that the orders requiring you to reside at Dharwar will continue in force, and that in the event of your failure to observe this restriction on your movements, or of your attempting to interfere in any way whatever in the affairs of the Aundh State, Government will be compelled to have recourse to more drastic measures." My *respectful submission is that whatever right the Government may have* had—and for the purpose of this submission I assume that it may have been entitled to deprive the Chief of his powers in 1907, though I do not admit it—they could not do anything further. There is no suggestion that he did not do everything that was right during the time that he was away from the State, during those two years, and he *replied by telegram (Exhibit 25):* "Government of India deprived me of my powers in 1907 subject to modification after watching my conduct for five years. Although conduct up to date satisfactory, am suddenly informed by Bombay Government of impossibility of reinstatement. Appealing to Government of India and your Lordship . . . ." That is to the Secretary of State. Well, Sir, he memorialised and his memorials were *rejected His mother was con*fined in a particular place, he was kept away from the State, they dealt with his money, they prevented his brother, who was the heir to the Gadi, on the assumption of his deposition, from succeeding, and they appointed an uncle who was of a junior branch of the family, disregarding the principle of primogeniture that applied in the case. My submission is that none of these things was within the Government's rights, and that the case is interesting as *showing the kind of* thing that the Government is not entitled to do. If one were not bound by any legal obligation at all, I could conceive perfectly easily the view being taken: "Well, we will do just what we think best from time to time, acting in the best interests of all concerned, using our discretion to the best of our ability." That is a view, but it is *not a view which is consistent* with the Treaties, the Agreement of Paramountcy, or with the Royal Proclamations which have been made. What I submit, on behalf of the Princes, is that far and away the most important thing in dealing with the Princes is the reputation of the Government for carrying out its promises and its treaties. The departures from the rights defined by those Treaties and the Agreement of Paramountcy are bound to be subversive of the good relations between the two, and to impair the authority of the Princes as potentially good governors. I am not going to trouble you by *going through this Aundh case now, but if you would look at the* details of it, I think you will find that, taking it as a whole, it discloses a curiously unsatisfactory state of affairs. That is the whole

of the cases on that subject. I might add this *Inter alia*, this Aundh case illustrates again what I submit is a fundamental thing Assuming that there is a right to impose a trial on a Prince against his will upon a criminal charge, I submit that criminal trial ought to be judicially conducted by a first-class Judge with experience of judicial work in criminal cases; and that all facilities in regard to evidence and procedure which are given at the Old Bailey in London ought to be available, even to a Prince They are available to the meanest of His Majesty's subjects here, and I see no reason why they should not be available to a Prince, if he has to be tried These informal trials, without any formal judicial procedure are hopelessly unfair to the accused

Professor Holdsworth: Is it not the case now that before a Chief can be deposed, a Commission must be appointed consisting of a number of eminent and able people to go into it?

Sir Leslie Scott: Yes; but the procedure is not satisfactory under that system. There never has been a trial yet

Professor Holdsworth: I know, but the personnel of the Court does not leave much to be desired?

Sir Leslie Scott I rather agree with that

Colonel Peel: Your contention is that he cannot be tried at all?

Sir Leslie Scott: My submission to you is that he cannot be tried at all.

Colonel Peel: Therefore, all the rest does not matter at all

Sir Leslie Scott: Do you think that that follows?

Colonel Peel: Yes, I do if you are right. If he cannot be tried at all, it is no good quarrelling about the procedure of his trial.

Sir Leslie Scott: I will go on to the next head, A (a) vii The next one is Minorities. I should have said, before leaving head A (a) vi, I have one more case which was printed after the main volumes were printed, by your permission I will bring that up later

I want to begin the Minority cases with that of Rewa (page 1207) The case is shortly stated There were two Minority administrations that are referred to here in the Rewa State Maharaja Raghuraj Singh died while Rewa was, at his own request, under the management of the Political Agent, and that administration carried on as the Superintendency during the minority of his late Highness That, I think, was from 1875 to 1882, and then from 1882 to 1895 On the whole, there is not much complaint to make, except that the complete records of this period were not made over to the State at the termination of the minority, and that the Superintendency went in some instances beyond the instructions of the Government In 1889 Mr Henvey, then Agent to the Governor-General in Central India, laid down certain principles for the guidance of the Political Agent, which, if they had been followed, would have obviated all the trouble That letter of Mr. Henvey's is an extremely important document. It is on page 1208 (Exhibit 1), and I want to read it from beginning to end It lays down what, in my submission, are the right principles to be applied during the minority, assuming that the Crown has the right, which I deny, to take charge. It is written in 1889 from the A G G to the

Political Agent and Superintendent of the administration of Rewa (No. 1846, dated 11th May, 1889): "A British officer superintending a Native State during the minority of its Chief, should always bear in mind that he represents in the State not only the Paramount Power, but also the minor whose affairs he is superintending; hence, he should endeavour to identify himself in sentiment and policy as closely as possible with the Chief, and he should not, save for grave and urgent reasons, initiate or support measures of administration which the Chief would most probably disapprove of and reject, if he were of mature age."—That sentence, I venture to submit, is absolutely sound—"This principle is subject to exception and modifications which may be required by the demands of progressive civilisation and by the exigencies of the State. But, as a general rule, it appears to the Agent to the Governor-General to be *indisputable, and careful observance of* it affords the best hope that a policy of cautious amelioration will be continuously maintained, and that the Chief will not be tempted, when he comes of age, to reverse or undermine the steps taken during the period of his minority, and especially in matters connected with religion is extreme prudence of action of the first importance." Then the next two paragraphs do not matter a bit. Then Paragraph 4 is: "We are bound on the one hand not to sacrifice the legitimate interests of the State. On the other hand, we must not expose the Maharaja unnecessarily to the ill-will of a powerful and privileged class whom his family have always held in reverence. Lastly, in our proceedings we must act with moderation, and where we have any indications, express or implied, as to the manner in which the Rewa Chief would wish the cases to be treated, we must not, without urgent necessity, disregard these indications. Accordingly, Mr. Henvey thinks that in view of the considerations above set forth, and on the principle explained in paragraph 2 of this letter, your action may be guided by three canons: Firstly, you should do what the Rewa Chief of ordinary prudence and judgment would probably do. Secondly, you should not do what such a Chief would probably not do Thirdly, you should not give any guarantee that may hamper the Chief in the future exercise of his lawful rights and privileges." The last sentence of this letter is this: "In conclusion, I am to say that you are authorised to communicate the substance of these orders to the parties concerned, and I am to request that you will in due course report the arrangements that you may make for carrying them into effect." Those two canons, I venture to submit, represent the most valuable rules of conduct in the conduct of an administration. The third one is very interesting in the light it throws, for instance, on the introduction of European jurisdiction in Kashmir in 1891, "You should not give any guarantee that may hamper the Chief in the future exercise of his lawful rights and privileges." Make your measures end, or be capable of ending, with the minority administration.

The second minority occurred in 1918 and lasted till October, 1922. This is known here as the "Regency" from the fact that in accordance with his late Highness' wishes, his Highness the Maharaja of Rutlam was appointed Regent of the Rewa State In the meantime the Government of India Resolution, Foreign and Political Department, Notification No. 1894-I.A., dated the 27th August, 1917, had been issued, on

the subject of minority administration. I want to read that, if I may. I think it would be convenient to have it printed at the end of to-day's proceedings, if you approve. You will remember, I think, that many complaints were made by the Princes as to the abuse of minority administrations, and in August, 1917, the Government of India issued a Resolution to all the local Governments and to the States. I want, if I may, to read that to you because it is very important. I do not suppose you have a copy of it.

Colonel Peel: Not at present.

Sir Leslie Scott: "The Government of India have for some time past devoted special consideration to the question of the principles which should be observed in connection with the administration of a Native State during a minority. The opinions of certain Ruling Princes and Chiefs and of Political Officers were obtained by the Government of India during Lord Hardinge's Viceroyalty and the question in some of its aspects came under discussion at the Conference of Ruling Princes and Chiefs recently held at Delhi The Governor-General in Council, after full consideration of the views elicited, has, with the approval of the Secretary of State, decided that the policy of Government in the matter may appropriately be stated as follows —The Government of India recognise that they are the trustees and custodians of the rights, interests and traditions of Native States during a minority administration Their general policy is laid down in the following extract from certain orders, which were issued some years ago for the guidance of Political Officers —'The Governor-General in Council is opposed to anything like pressure on Durbars to introduce British methods of administration. He prefers that reforms should emanate from the Durbar, and grow up in harmony with the traditions of the State. Administrative efficiency is at no time the only or indeed the chief object to be kept in view. This should specially be borne in mind by officers charged temporarily with the administration of a State during a minority, whether they are in sole charge, or associated with a State Council. They occupy a position of peculiar trust, and should never forget that their primary duty is the *conservation* of the customs of the State. Abuses and corruption should be corrected as far as possible, but the general system of administration to which the Chief and the people have become accustomed should be unchanged in all essentials The methods sanctioned by tradition in States are generally well adapted to the needs and relations of the Ruler and people. The loyalty of the latter to the former is generally a personal loyalty, which administrative efficiency, if carried out on lines unsuited to local conditions, would lessen or impair' The Government of India realise that the special conditions of each State require special treatment and will be glad to receive and consider requests by individual Ruling Princes or Chiefs regarding any principles which they may wish to be adopted in the case of their own States or families Due weight will be attached to wishes so expressed or to any written or verbal instructions left on record, but the Government of India on whom the final responsibility rests must reserve to themselves full freedom of action in dealing with such requests or instructions. Subject to the foregoing observations, the Governor-General in Council is pleased to lay down the following general principles for the

of minority administrations. The announcement is subject to the reservation that the principles laid down will be liable to relaxation in individual cases where special conditions may render their strict application inappropriate."

Now, Sir, I am not going to read it all through: we will have it printed, by your leave, at the end of the proceedings (Appendix " S "); but the principles that I have read in the paragraphs up to now, I submit, are the right principles, subject to two comments. The Government recognise that they are trustees. That is true, in my submission, as soon as they take charge But there is no antecedent trust entitling them to take charge, and my submission is that where there is no internal danger through the prospects of feuds inside the State, the Government has simply to stand by and let the administration of the State in accordance with its constitution conduct the government. If it fails and danger supervenes the Government of *India may then intervene, but not till then* There is no general *right* to take charge. I cannot help thinking that this impression that there is a general right to take charge even of full powered States is based upon a false analogy of the old Indian practice of a suzerain with his feudatory. I speak subject to correction. I think in the case of a real feudatory in India it was recognised that in the case of a minority the suzerain had the right to intervene; but the relations between the Government and a full powered State entering into a treaty with it from an independent point of view are totally different from those of a suzerain and feudatory. And to apply to the relations between the Government and a full powered State the practice applicable to the case of a mere feudatory, I submit, is to act upon a false analogy. I want to be very clear about this; I am not saying, of course, that there are not some States in India which may be regarded as occupying the position of feudatory towards the Government; I am only dealing for the moment with those States which are plainly full powered States and it is with regard to those *that I submit that there is no* right to take charge of the administration merely because there is a minor Ruler. According to the law of every one of the States I believe the position is that the child Ruler succeeds automatically and that there is, according to the constitution of the State, a recognised machinery for carrying on the internal administration of the State. The Government has just to stand by and watch, no doubt carefully, to see that there is no *internal danger. That is the first comment that I make.*

The second comment I make upon this resolution of 1917 is this They say, " The Government of India on whom the final responsibility rests must reserve to themselves full freedom of action in dealing with such requests or instructions" If that means that the Government is entitled, if it chooses, to disregard the internal arrangements of the States in regard to minority matters, I submit that it is wrong.

I remember one case which will illustrate that submission. Sir Harcourt Butler, I am sure, will remember that there was an agreement about the minorities between the Phulkian States that in the event of a minority the other Phulkian States should jointly nominate the Regent. That was followed in one or two minorities

in the Phulkian States in the middle of the last century; but in the case of Patiala at the end of last century—I speak subject to correction —it was ignored by the Government and they put in their own administration, their own nominees. My submission is that that is wrong and that the Government has no right to do it.

Then the other point is where the Government say that their observations of the principles they enunciate, which are broadly speaking right, in my submission, are subject to the reservation that they will be liable to relaxation in individual cases Now that introduces an element of discretion which I respectfully deny that the Government possesses. Those are the observations I desire to make upon that document.

The next case to take is Sawantwadi (page 1211) There are four cases here of the Sawantwadi State. May I remind the Committee that Sawantwadi is the State that I think first made a treaty with the British Power, namely, in 1730—a completely full-powered State at that time. The management of this State was assumed by the British Government in 1838 and is noted by the Honourable the Court of Directors in their letter No. 1 dated the 20th March, 1839 "The management of the State was assumed not for the subversion or injury of the Sar Desai's Government, but to restore the Sar Desai's authority." "Sar Desai" is the titular name of the Ruler Where the Paramount Power has agreed to assist the Ruler, to preserve him and his family upon the throne, that, of course, is a proper ground for intervention, but during that minority the Government used the occasion in order to suppress the State Mint (Government of Bombay letter, No. 2602, dated 28th May, 1845, to the Political Superintendent of Sawantwadi) I need not go into the details of it, but my submission is that to use the occasion of a minority in order to benefit the British Government by increasing the profits of its currency at the expense of the State which you deprived of profits, is wrong.

Colonel Peel There might be two views about that. I mean I can easily imagine taking over the currency of the State for the benefit of the State. That view is quite a tenable one, is it not?

Sir Leslie Scott Yes, but there is no ground for suggesting anything of the kind here

Colonel Peel: I assume there is no ground for assuming the other either: that it was done for the profits that could be made out of it

Sir Leslie Scott: It gives no ground to the Government to do it

Colonel Peel: Well, it might be done for the benefit of the people of the State That is a tenable view, I mean

Sir Leslie Scott: But supposing it was, what right has the Government to exercise that form of charity inside a State?

Colonel Peel: That is another question, whether they are able to do anything except consider it from the legal point of view, that is another question You say they did it for their own benefit

Sir Leslie Scott. I did not say that, I said that they were not entitled to do a thing which was in fact for their own benefit at the expense of the State merely because there was a minority

Colonel Peel: Well, it implied they were doing it for that purpose. If I was wrong, I am sorry I misunderstood you, but I understood you to say they were doing a thing at the expense of the State for their own benefit.

Sir Leslie Scott: They thought it was a desirable *thing to do* and they did make a profit out of it. I particularly do not want to be driven into making allegations; it is enough for me to state a fact. It was a profitable concern to the State and it is known that the currency brings in a substantial revenue to the Government of British India to-day, and all I say is that to do that during a minority is wrong. The States regard their Mints and the right to have their *own currency as a matter of great importance*. Let me take an illustration. There is a State, the representative of which is not very far away, called Cutch, which has its own currency and its own Mint, and I believe that a large revenue is made by the State of Cutch by having its own currency. Whether it is a metal currency I do not know; it may be partly a paper currency, I do not know. My submission is that if there was a minority in the State of Cutch it would be grossly wrong for the Government to intervene and suppress that Mint with the result that the suppression of it would be necessarily that the profits of the Government Mint would go up very largely. When the Mints *have been suppressed the profits made out of* the currency supplied to the State after the suppression, have not been handed over to the States, they have been retained by the Government of India. The States say that is wrong, and I submit that they are right in saying so There is no pretext for doing it.

Colonel Peel: There might be a pretext. Although they lost the right to mint their currency it would be to the advantage of India as a whole.

Sir Leslie Scott: The question, of course, as to whether it is to the advantage of India as a whole that there should be only one currency throughout its Empire is entirely a separate question. I think personally there is a great deal to be said for having only one currency, on purely economic and commercial grounds. Many of the States are prepared to accept the same view but all they do say is "That if any arrangement of that kind is brought about you must do it by our consent, and not by taking our rights from us during minorities."

Colonel Peel: You have not been putting the position in the right way; if I may respectfully say so, you put it the right way that time.

Sir Leslie Scott: That must have been an unexpected accident, Sir. I am very pleased to hear that from you; it is the first of the kind I have had.

In view however of the loss that would thereby be caused to the State, the Political Superintendent (that is the British officer in charge of the State) solicited a reconsideration of the Orders, remarking that "the change of currency that is now desiderated by Government will not only prevent the possibility of the State recovering itself, but be a virtual decree of annihilation." (Vide letter No. 54 dated 23rd April, 1840) The officer in question is a gentleman who was in the habit of sticking out, Captain Le Grand Jacob He objected to the abolition

of the Mint in the first letter (No. 28, dated 3rd March, 1846), and he objected to the Exchange proposals about the introduction of British currency in the second letter (No. 54, dated 23rd April, 1846). He said, in blank terms "You are robbing the State, it is not fair." But they did it That is the first case. Whether he succeeded on the second application in persuading them to introduce a different exchange arrangement I do not know. You may be interested in the context to know that in the case of Cutch, when His Highness the Maharao was a minor, an attempt was actually made to get Cutch to do the same thing. Pressure was brought to bear upon his Dewan, but his Dewan was strong enough to resist, with the result that the Mint was left there, and he still has the revenue from that Mint, and it is very considerable. That is what His Highness, who is sitting next to me, tells me.

The second one of Sawantwadi (page 1214) is this. there was an estate of Parma consisting of 22 villages, and representing seven square miles of territory, that during a minority was given away as a hereditary Jagir. I am not going to trouble you with the details of it, but that is a good illustration of what, I submit, is not legitimate. The villages in question had been part, up till then, of the State, the State retaining all its rights To give away seven miles of a State is quite properly regarded by any Ruler of a State as affecting the prestige of the State As you know very well, it is a thing that they detest, and it is, applying the criteria of Mr Henvey in his letter to Rewa, perfectly obvious that that is the kind of thing that a Ruler would not agree to, and therefore it ought not to be done.

The third one, Sir, is on page 1228 This is, I think, an important case, because it illustrates the extreme difficulty that a very good Political Officer on the spot has in doing his best to protect the State when Government will not let him. I am sure that that kind of thing must happen very often; that the man on the spot sees the difficulties of the State, sees the unfairness to the State of the proposed action, makes a representation to Headquarters, and gets it turned down, and if he presses he is merely told for his pains that he is insubordinate, and loses his chance of promotion You will see that is exactly what happened to this gentleman I do not know whether he lost his promotion or not The question was about Nazarana The State of Sawantwadi, being a full powered State, obviously would not be subject to any Nazarana rules, it could not be under obligation to pay Nazarana, it had never done so In this particular case an Order that it should pay Nazarana was imposed upon the State as a fine for the disloyalty of the Ruler, who was pardoned, and allowed to come to the Throne If you look through Aitchison you will see that this State had a very chequered career from about 1838 for a long time As a corollary to the Orders issued by the Government of Bombay in 1836 and thereafter about the status of Sawantwadi in disregard of the treaties, the Government of Bombay were pleased in 1887 to register this State as liable to pay Nazarana on successions under the Nazarana Rules without giving any intimation to the State or giving it a hearing on the subject In 1900, on the death of the then Sar Desai Raghunathrao, alias Baba Saheb, on 14th December, 1899, without issue, the succession of his cousin, Shri Ram, alias Rao

Colonel Peel: Well, it implied they were doing it for that purpose. If I was wrong, I am sorry I misunderstood you, but I understood you to say they were doing a thing at the expense of the State for their own benefit.

Sir Leslie Scott: They thought it was a desirable thing to do and they did make a profit out of it I particularly do not want to be driven into making allegations; it is enough for me to state a fact. It was a profitable concern to the State and it is known that the currency brings in a substantial revenue to the Government of British India to-day, and all I say is that to do that during a minority is wrong. The States regard their Mints and the right to have their own currency as a matter of great importance. Let me take an illustration. There is a State, the representative of which is not very far away, called Cutch, which has its own currency and its own Mint, and I believe that a large revenue is made by the State of Cutch by having its own currency. Whether it is a metal currency I do not know; it may be partly a paper currency, I do not know. My submission is that if there was a minority in the State of Cutch it would be grossly wrong for the Government to intervene and suppress that Mint with the result that the suppression of it would be necessarily that the profits of the Government Mint would go up very largely. When the Mints have been suppressed the profits made out of the currency supplied to the State after the suppression, have not been handed over to the States, they have been retained by the Government of India. The States say that is wrong, and I submit that they are right in saying so. There is no pretext for doing it.

Colonel Peel: There might be a pretext. Although they lost the right to mint their currency it would be to the advantage of India as a whole.

Sir Leslie Scott: The question, of course, as to whether it is to the advantage of India as a whole that there should be only one currency throughout its Empire is entirely a separate question. I think personally there is a great deal to be said for having only one currency, on purely economic and commercial grounds. Many of the States are prepared to accept the same view but all they do say is "That if any arrangement of that kind is brought about you must do it by our consent, and not by taking our rights from us during minorities."

Colonel Peel: You have not been putting the position in the right way; *if I may respectfully say so, you put it the right way that time.*

Sir Leslie Scott: That must have been an unexpected accident, Sir. I am very pleased to hear that from you; it is the first of the kind I have had.

In view however of the loss that would thereby be caused to the State, the Political Superintendent (that is the British officer in charge of the State) solicited a reconsideration of the Orders, remarking that "the change of currency that is now desiderated by Government will not only prevent the possibility of the State recovering itself, but be a virtual decree of annihilation." (Vide letter No 54 dated 23rd April, 1840) The officer in question is a gentleman who was in the habit of sticking out, Captain Le Grand Jacob He objected to the abolition

of the Mint in the first letter (No 28, dated 3rd March, 1846), and he objected to the Exchange proposals about the introduction of British currency in the second letter (No 54, dated 23rd April, 1846). He said, in blank terms "You are robbing the State; it is not fair." But they did it. That is the first case. Whether he succeeded on the second application in persuading them to introduce a different exchange arrangement I do not know You may be interested in the context to know that in the case of Cutch, when His Highness the Maharao was a minor, an attempt was actually made to get Cutch to do the same thing Pressure was brought to bear upon his Dewan, but his Dewan was strong enough to resist, with the result that the Mint was left there, and he still has the revenue from that Mint, and it is very considerable That is what His Highness, who is sitting next to me, tells me.

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Saheb, was sanctioned on conditions noted in G R. No. 4002, dated 1st June, 1900, and the Government of India, No. 2033 I.A., dated 9th May, 1900. One of these conditions was that "the Political Superintendent should report the amount of Nazarana leviable and submit proposals for its payment." The Political Agent by his letter No 2836, dated 28th July, 1900 (Exhibit No 1) requested the Government to be informed of the grounds on which the State was considered to be liable to pay Nazarana. He also adduced reasons to show that the State, by its position as defined in the treaties, and in accordance with the usage and practice obtaining in this behalf, was not liable to pay Nazarana Would you kindly turn, Sirs, to Exhibit No. 2 (Letter No. 4405, dated 15th December, 1900, from Political Agent to the Secretary, Bombay Government). This is a very interesting letter.

"With reference to Government Resolution, Confidential No. 4002, Political Department, dated 1st June, 1900, forwarding the orders of the Government of India"—about Nazarana—"I have the honour to attach hereto a copy of the State Karbhari's letter expressing the view of the Durbar on the above subject, and to respectfully solicit a consideration of the points raised in his letter as well as of those discussed herein by me before any final orders are passed on this matter. I find after a very careful investigation of the records that in the past no successor to this ancient Principality, whether a direct heir or an heir by adoption or a collateral, has ever paid a Nazarana or tribute to any paramount power, British or Native; and in these circumstances I am humbly of opinion that the Sawantwadi State is not liable for the payment of Nazarana in the case of the present or any future succession. In support of this humble opinion I beg permission to refer to Article 6 of the Treaty of Majgaon, dated 17th February, 1819, wherein the Raja and his heirs are declared 'absolute rulers' of the Sawantwadi State. I also request the favour of a reference to Colonel Schneider's letter No. 596, dated 17th December, 1867, to the address of Government, wherein he pointedly took exception to the expression 'usual Nazarana.' It will be seen that Colonel Schneider was prudent enough to foresee that the expression 'Usual Nazarana' used by Government in their letter, dated 16th September, 1861, to the Sar Desai (a copy of which was sent to this office with Government letter No. 3001, dated September, 1861), might at some future date be used as a precedent for claiming Nazarana from this State. 2. During the lifetime of Khem Sawant, Sar Desai of Sawantwadi, his son and heir, Phond Savant, a boy aged 16 years, joined in the rebellion of 1844-45 and as a punishment was declared to have forfeited his right to succeed to his father's Gadi. In 1861 the Secretary of State for India was induced to obtain a pardon for Phond Savant, by which the latter's succession to the Gadi of the Sawantwadi State was secured on condition of (i) payment of the debt due to the British Government on account of the insurrection of 1844-45, and (ii) payment of the usual Nazarana equal to a year's revenue of the State. 3. The debt in question, amounting to Rs 5,60,514, due to Government, was paid off during the lifetime of Khem Sawant; consequently, when Phond Savant succeeded to the Gadi there remained only the second condition to be fulfilled 4 Now supposing that the Sawantwadi State was liable to the payment of Nazarana, no such

payment would have been due or leviable under the rules on the succession of Phond Savant, because he was the legitimate son and direct heir of the last Sar Desai. It is, therefore, clear that the payment demanded in his case as Nazarana was a pecuniary punishment for his personal participation in the rebellion, and not a Nazarana on his succession, as contemplated by the Nazarana Rules, present or past 5. It seems clear that the Secretary of State, in pardoning Phond Savant, decided to impose on him a fine, the amount of which was simply based on the principles which govern the levy of Nazarana, hence the use of the word 'Nazarana.' The term 'Nazarana' as used by the Secretary of State in the case of Phond Savant was, I submit with great diffidence, intended to convey the meaning of fine or penalty only, and he therefore did not hold this State, by the use of that term, liable for the payment of Nazarana on that or any other succession. Similarly, I venture to think that the word 'usual' had no special reference to the Sawantwadi State, as is evident from the fact that this State had never paid any Nazarana; consequently, the word 'usual' was used to explain that Phond Savant was to pay for his particular succession to the Gadi a sum of money equivalent in amount to the Nazarana which would be payable by a State liable to the payment of Nazarana, for which the Sawantwadi State was clearly not then liable 6 Colonel Schneider in his previously-quoted letter also expresses the foregoing views, and these the Bombay Government tacitly accepted, as in commenting upon them they have in paragraph 15 of their letter No 72, Political Department, dated 27th March, 1868, to the Secretary to the Government of India, used the words 'now liable' and 'present Chief' which, I respectfully submit, show that liability for payment of Nazarana referred solely to Phond Savant, the then 'present Chief' and not to any of his successors on the Gadi of this State 7. Government, in their Resolution No 6031, dated the 9th August, 1900, say that they have registered the Sawantwadi State as liable to the operaton of the Nazarana Rules framed in 1887, but I can find no record in this office to show how and under what circumstances this State was held liable for the payment of succession Nazarana, despite the fact that it has hitherto never paid any such Nazarana or any kind of tribute, even in the case of collateral successions "

That was put forward. He enclosed a letter (No 1550, dated 17th November, 1900) from the Karbhari which I am not going to read, but the Government decided (Resolution No. 2753, dated 11th April, 1901) that the State had got to pay although it was admitted in paragraph 4 of letter No 69, dated 2nd March, 1901, from the Commissioner, S D, to the Secretary, Bombay Government, " that the Nazarana levied at the time of Ana Saheb's succession "—that is the same as his other name, Phond Savant; he changed his name on succession—" was by way of a penalty." Then it goes on · " The Commissioner is, therefore, of opinion that the State is bound to pay the Nazarana " and you get the Resolution of Government, No 2753, dated 11th April, 1901 (page 1234), saying the State has got to pay, and Exhibit 3 (Bombay Government letter No 5682, dated 12th August, 1901) is the Order directed to the State to pay Then this excellent Political Agent, Major Marriott, in 1901, still feels that an injustice is being done to the State and very bravely criticises the reasoning of the Commissioner's letter, who decided that the State was liable, and (page 1235) he puts up a very carefully

reasoned letter (*No.* 2437, *dated* 12*th July*, 1901, to the Secretary, Government of Bombay) which I have read through and I ask you, Sirs, to read, giving reasons which seem to me quite conclusive that Nazarana was not payable by the State of Sawantwadi. Now, read the letter of Government upon that (page 1236). Major Marriott's letter is a very carefully reasoned letter, a *very respectful, careful, tactful letter.* This is what he got for it, No. 3549, dated 12th May, 1902, from the Political Department, Bombay Castle, paragraph 2: "I am desired, in reply, to say that His Excellency the Governor-in-Council has perused the letter, and especially paragraph 5, with surprise and regret. I am to intimate that His Excellency expects the officers of his Government to accept orders issued by him as a sufficient guide for the conduct of their official duties. The policy and principles underlying the rules regarding the levy of Nazarana on certain successions are so well known that a further reference to the Government of India in the matter is entirely unnecessary." Major Marriott said: "If you have any doubt, will you refer it to the Government of India." Comments are superfluous Perhaps an appeal for your sympathy would not be out of place.

The fourth case of Sawantwadi (page 1237) is another case where a valuable asset was taken away from the State during a minority, on a money compensation fixed during the minority, namely, the right of making salt. It manufactured its own salt but the British Government thought, apparently wrongly, that the salt from the State was being exported from the State and damaging their revenue. Would you look at Exhibit 1 on page 1238? The Acting Chief Secretary of Government says (No. 678, dated 20th February, 1838, to the Acting First Assistant Collector in charge of Rutnagiri) in paragraph 4: "*No time should*, I am desired to observe, be lost in effecting this arrangement as the salt trade is already finding its way above the Ghauts to the great detriment of our revenue and the evil will not be confined to the salt produced in the Goa territories, but that from the pans in the country of Angria and the Hubshee will no doubt soon adopt the same route,"—and in the result the salt pans of the State were shut down in return for an annual payment of 5,500 Rupees, and (page 1240) you will see how it was done A meeting was held (26th January, 1880) at which the following persons were present: Mr. Crawford, the Commissioner, who was the gentleman looking after the Salt Revenue; Colonel Westropp, the Political Superintendent who was in charge of the State of Sawantwadi; Mr. Curey, the Acting Collector, Salt Revenue; and Mr. Sak-*haram B. Bawdekar, the Assistant Political Superintendent—all of them* officers of the Government, nobody else, and they there make an arrangement, and, if you notice, in paragraph 4 the Political Superintendent, although he was the Officer of the Government, because he was representing the State, said that he "strongly urged that the subjects of the Sawantwadi State would have to pay an enhanced price for British salt in future and that the British Government could not justly claim the profit therefrom." This is not currency, but it is salt After the arrangements are made the Government records a Resolution (No. 614, dated 27th January, 1880): "The arrangements effected appear judicious and likely to lead to a material increase in the British salt revenue. Credit is due to the officers concerned for this satisfactory result of their conference."

Sir Manubhai Mehta tells me that the right of exporting salt was taken away from Baroda also during a minority, without any compensation at all in that case.

Chairman: Export by land. It now exports by sea.

Sir Leslie Scott: It was deprived of the right of exporting either by land or sea.

Secretary: The right to export by sea was restored, under certain conditions, only two or three years ago.

Sir Manubhai Mehta: Last year.

Secretary: Anyhow, there has been correspondence for some ten years.

Sir Leslie Scott: Would you kindly turn back to page 1145? I will run through the others. I thought it convenient to take this first. I do not know whether a reference would be convenient to the Committee, to that point that I suggested to them of the false analogy upon which the Government may have acted, namely, the right of a Suzerain to control the minority of a Feudatory. You will find it referred to in one of the Jaora cases (page 1003), if you would just like to put the reference to it.

In the Bansda case this was a village, and if you would turn to page 1145 you will find the report of the Superintendent of the State (dated 9th July, 1877, to the Agent to H E the Governor at Surat) as to the value of the village If you look at paragraph 3: "Now in the portion of the land which is decided to be in the possession of this State there are teak and other trees of the value of about Rs 1500 to 2000 as estimated by me. In this tract the low-lying land is culturable, but mostly there are good timber trees rendering the culturable land unculturable It is also not possible to get cultivators of good or even ordinary condition The land is, therefore, useful for growing good timber. Though the village is very small, I am not for selling it But I propose that it should be given either to the Pimpari Naik or to the British Government for management on an annual rental . . " Now the Government were moved during the minority by the Political Agent to sell it, in 1877 In the year 1877, when the late Maharawal Shri Partap Sinhji was a minor, and the State was under British administration, the Agent to His Excellency the Governor, at Surat, communicated to the Political Department of the Bombay Government (No 187, dated 20th July, 1877) that he "as custodian of the rights of the Bansda Raja, would recommend that the village (Bibabari) be sold outright for the sum of Rs 1000." He further went on to say: "We have authority to finally dispose of the matter now, and can do it more satisfactorily now than it will be possible for successors eight or nine years hence"—when the minority would have come to an end I try to avoid epithets, Sir, but do you think the epithet "Barefaced" would be quite out of place there?

Chairman: I am not prepared to express any opinion on epithets

Sir Leslie Scott There are two or three cases I have seen where the Political Officer in charge of a minority has said in terms "Now is the chance to do it, we can do it now, when the minority is at an end, of course, it will not be possible" That is so dead in the teeth of the right principles as enunciated by Mr Henvey and in the Government Resolution of 1917 that it is obviously self-condemned I need not go

into details of it. He proposed that it should be sold for 1,000 rupees. The only difference made by the Government was that they said "That is too much" and they bought it for Rs 500. I leave it at that.

The next case is Baud (page 1153). I will not ask you to go into that in detail. There are two points. The first is that when this State was released from Government Minority Administration in 1925 certain restrictive and binding conditions were imposed upon the present Chief at his installation, by a letter (No. T.Con/9, dated 15th January, 1925, from the Political Agent) which the Chief was expected to follow. The laying down of such conditions is considered unjustifiable in view of the terms of the Treaty of 1904. That Treaty simply left it as a full-powered State and nothing more. It is just the point that I made before that, even assuming that the Government is lawfully in control of the administration during a minority, that does not give the Government any right to impose conditions upon the full powers of the Ruler on his coming of age Again, I want to be perfectly clear, I can conceive cases in which some limitation of powers would be very desirable. I do not dispute it for a moment, but not necessarily always—it would depend very much on what is the competence of the advisers available in the State to guide the young man on his coming to the gadi —to full powers But that is not the question. The question is: Is the Crown entitled to do it as of right—to impose its will? Is it its discretion, or is that an unlawful trespass upon the sovereignty of the State. The moment the rights are established on these matters, and on all others, I am certain (and I say it with the authority of the Standing Committee) that there will be no difficulty about making reasonable arrangements, by consent, in future, with the general body of the Princes, through a committee representing them. But they do ask to have their rights defined in the first instance. It is very important, I venture to submit, to try and approach it not always from the point of view of a general father of the country trying to think of its welfare but to consider also the great importance of encouraging the development of the States in a spirit of real independence, determining to govern themselves well.

The next case is Bihat (page 1152). The ancestral home of the Ruler of Bihat was in Village Gurha (District Jhansi) in U.P. The whole of this village was held by them as Zemindars. In 1914, during the minority of the present Chief, the Political Agent in Bundelkhand (No. 4097, dated 4th December, 1914) issued orders to the Kamdar (Manager) of Bihat to take steps to sell the Chief's above-mentioned ancestral share in Gurha Of course that was not a village held in sovereignty. It was only a village held in zemindari, but that does not matter. It was his ancestral home, and the Political Agent sells the village out and out during the minority!

Then (page 1160) comes the case of Bikaner. That is quite short and outspoken It has been customary with the Political Department to obtain agreements from the States which imply abandonment of their sovereign rights. Such agreements are the least justifiable when obtained during the minority of Rulers, when the States are only nominally administered by a Council of Regency. These Councils usually are composed of officers lent to the State by the Government of India and are dominated by the Political Officers attached to the States. Such an example occurred in the case of Bikaner when in 1893 the present

Maharaja was 13 years of age, and the late Maharaja had been dead for six years. The date of the agreement is the 16th February, 1893 (Aitchison, Vol. III, page 355), and its first clause reads: "The Bikaner Durbar agrees to abstain during a term of 30 years from the date of the notification aforesaid, from coining silver and copper in its own mint and also undertakes that no coins resembling coins for the time being a legal tender in British India, shall, after the expiration of the said term, be struck under its authority, or with its permission, at any place within or without its jurisdiction." This is a unilateral agreement. The undertaking is on the part of the Bikaner State, with no compensating or corresponding undertaking on the part of the British Government. For a complete text of the agreement please see page 355 of Aitchison's Treaties, Vol. III, Edition 1909, "Thirty years" and "during the minority" show that it was not intended to be a temporary arrangement. My submission is that there can be no conceivable justification for that.

Chairman: The Government of India have issued a Resolution which more or less removes this grievance, does it not?

Sir Leslie Scott: I did not know that.

Secretary. It is in the Minority Resolution.

Sir Leslie Scott. I beg your pardon, I thought you meant something about Mints.

Secretary: Nobody can change the coinage now during a minority.

Sir Leslie Scott: I do not remember any sentence in the Minority Resolution of 1917 saying that all assets taken from the States during minorities in the past shall now be returned. There ought to be something of that sort, ought not there?

Then Gwalior has several cases, but they can be taken quite shortly. The first case was as to an order about the medical officer (vide Political Agent's letter No. 1-1686/H.D., dated 16th December, 1886), but I do not think I shall trouble you with the details of those cases.

Chairman: You have given sufficient to illustrate your point.

Sir Leslie Scott: That is what I felt.

Chairman: The important thing is the future, as we all realise. Just now you made a very eloquent submission and an appeal to the Committee to regard the future and to deal with these Princes in a spirit which will enable them to join in the great work that is before the Empire. That is an appeal which certainly carries great weight with my colleagues, I think I may say, and with myself.

Sir Leslie Scott: I am obliged. Then I can take these quite shortly. Idar has a very long case (page 1176), which is printed fully, but I think it can be disposed of quite shortly. As you are aware, there has been a long-standing question as to the relations of Idar to its feudatories. You will remember I dealt with the matter in that context—the Bhoomias and Pattawats. The complaint of Idar is that steps were taken during the minority administration, which lasted from 1869 to 1882, to deprive Idar of its sovereignty over Jagirdars of that kind, although up to then its position to them had been plainly recognised by Government.

in the later years through this agreement having been overlooked. It is quite clear that the agreement of 1820 recognises the status of Sangli as being much more independent than that of the agreement of the preceding year which was thereby cancelled. That being the status of Sangli, you will find various references in West dealing with it. It is quite interesting I have looked it through, but I do not want to delay the Committee with going into the details of the matter. You will see the two letters referred to as Exhibits 2 and 3 (page 1288).

The reference to Sangli is Volume 1, page 228, under the first heading of the classification, A (a) i, which is "Denial of Prince's sovereign rights within his State." In that case you will find various interferences recorded with Sangli, which Sangli submits were inconsistent with the status recognised under its Treaty. I do not propose to go into them in detail, but I would ask you kindly to read them carefully For instance, the Political Agent informed the Ruler of Sangli in 1889 that the Government had placed certain restrictions on the jurisdiction of the State by rules prescribed for the exercise of jurisdiction, and had vested in the Government control over the Southern Maratha Country States. The Ruler of Sangli (Memorial dated 22nd June, 1889) protested against the application of these rules to him, but without success (vide letter No. 2598, dated 5th August, 1891, from Political Agent). At some date—I forget the exact date—Nazrana was exacted. It is a mere illustration. I am not asking on behalf of the Sangli State for the Committee to rectify matters, but it is a very clear illustration showing that there was no such power as that which is claimed by the Government in connection with these rules.

Then the next case of Sangli is in the same volume (page 539). That is under the classification "Exercise of jurisdiction by the Government of India, representing the Crown, over defined areas." There, again, I do not propose to go into details, but the Government treated these three villages which are there mentioned, of Dudgaon, Gotyal, and Dodwad, as villages very much subject to the direct administrative control of the Government of India or the Government of Bombay. My submission is that that was inconsistent with the rights of the State. There are three points as regards Sangli: (1) That the Treaty of 1820 has been ignored; (2) That, as a result, the status of Sangli has been treated as being lower than it is, and (3) restrictions have been imposed and interference has taken place which is not justified

Then the others which were omitted I had better deal with to-day, as I have been postponing them several times. Those are the Simla Hill States. I want to take the Simla Hill States first of all. The pages where the Simla Hill States are dealt with are 270 and 516 Would you mind turning to Volume III, Page 1622. I think it will make it much clearer if you do it in that way. This is entitled A. (a) xvii, Sir, which relates to "Other interferences in internal administration." I wanted the head note of it first of all Before the commencement of hostilities against the Gurkhas—that was in the early part, you remember, of the last century—the Simla Hill States were given a distinct and clear assurance of the scrupulous regard of the British Government for "all their ancient rights and privileges." After the downfall of the Gurkha Power, the ancient rights, internal and

external, of the States were recognised by the Sanads issued by the British Government. In 1824 it was definitely declared by the Governor-General in Council: "It is far from desirable that the local British authority should interfere in the details of the administration of any protected State so long as the Native Chief conducts his affairs with even tolerable equity, moderation and humanity" (Vide Punjab Government Records, Vol I, page 304)

Now, Sir, there are some typical interferences here which will throw a good deal of light upon the kind of complaint made by the Simla Hill States to-day. Take the case first of all of Kumharsain, one of the Simla, Hill States Early in 1927 information was received by the Rana Saheb of Kumharsain that British Police had been deputed to enquire into certain allegations against the State on the complaint of a notorious rebel, and a telegram was despatched by the Rana Saheb protesting against such action If you will just look at the correspondence, it speaks for itself more eloquently than the narrative, it begins with a telegram (page 1623), Exhibit A, from the Rana Sahib to the Superintendent (29th January, 1927) As you know, Sirs, there is a Superintendent of *Hill States that deals with them all* "I am informed Simla Police has come with Mahun the State rebel without intimation British Police has never been sent to any State without the consent of the Ruler" Then the answer (No 580, dated 16th February, 1927, from the Superintendent) is ". I write to say that as Kumharsain is at a considerable distance from Simla and the case was urgent a Head Constable was sent with a letter to you" Then we get the facts from the answer (dated February, 1927—no reference quoted) of the Rana "With reference to your letter No 580, dated the 16th instant, I write to enquire what was the urgent case in whose connection a Head Constable was sent to village Rajtari and what is the result of his enquiry The Head Constable did not come with the letter to me but he went to Rajtari village direct with Mahun, the State rebel, and sent the letter to me through one of his Constables The P.A C's letter says that he has been sent to enquire into certain offences against some of the subjects of my State Knowing that P.A C cannot send Simla Police to enquire into the offences occurring in my State, and I only have jurisdiction to enquire or decide all sorts of cases But I tolerated this for the sake of your prestige at the sacrifice of my own prestige and influence The position of my State has been lowered down in the estimation of neighbouring people as the Head Constable remained there for more than a fortnight This sort of interference is harmful to me and to you as well. This will produce chaos like Madhan and Khaneti and will go beyond the control of the Chief and the S H S. as well It will not be out of point if I briefly refer about Mahun, the notorious State rebel Mahun is a notorious mischief maker of very long standing. This man tried to make a revolution during last settlement and he was bound down to keep good behaviour . ." and so on. Then the P.P.C. writes (dated 25th January, 1927): "I am deputing L Munni Lal to enquire into certain offences against a few of your subjects. I trust you would give him all possible assistance." That is the letter that was brought and sent up by the Constable. Then next (No 1226, dated 10th April, 1927, from the Superintendent to the Rana): "With

reference to your Murasila dated the 13th Chet, 1983, I write to say that on the 24th January, 1927, Mahun and others presented nine complaints to the Political Assistant Commissioner alleging theft and other crime at the instigation of the State officials. He received another petition on the 26th January, 1927, which the Superintendent, Hill States, sent to him for necessary action. Similar allegations previously were made against the chief officials of the State, and were considered not without foundation. Moreover the terms applied to Mahun in your Murasila dated Magh 17th, 1983, indicate that it would not have been satisfactory to decide the merits of these allegations without some independent enquiry. For this reason an experienced Police Officer was despatched to investigate The allegations made by Mahun and others are now with me under consideration. If they are found to be malicious and false, you may rest assured that proper steps will be taken to uphold the dignity of your State and to recompense the officials falsely accused. Under the above circumstances I will be obliged if you will arrange to pay the bill of Rs 96/12/-, constituting the travelling allowance of the police sent to Kumharsain to investigate, without further delay." Then the Rana Viddyadhar Singh replies (No 68) in a very dignified letter. He says there was no general rising in the State; Mahun made some allegations, and then a Government Police Officer was sent to investigate . . . ".I am bringing these facts to your notice simply to show that the extraordinary procedure of sending Government Police Officer to enquire in a case without any reference whatsoever to me was adopted not on my request, not because there was any rising in my State, but on certain allegations made by certain people in which the Superintendent Hill States, wanted to institute an independent inquiry." And he sends the money under protest on the terms that it shall be refunded to him if it is found that he was not to blame

Then (Exhibit G) the Superintendent Hill States writes (No. 1703, dated 11th May, 1927) " . . . You may rest assured that if in my findings in the several complaints which have been made by Mahun and others, and which are now pending in my Court, be to the effect that these complaints are without foundation, the expense incurred on the investigation will be recovered . . Under the above circumstances you are requested to remit the sum of Rs. 96/12/- without further delay " With great respect, Sir, that is a complete misconception of everything that is right. There is no right to send police into a State to make independent investigation in that kind of way. I very respectfully submit it is quite unwarrantable, and then, on the top of it, to ask the Ruler of the State to pay the travelling expenses for sending the police there is a bit stiff, Sir. That is that particular case.

The next one is a very striking case, and it is referred to on page 1023, under the heading (B). This can be put very shortly. A gentleman called Fitzpatrick died intestate. His estate was inside the Baghat State There was a cottage there which the Administrator-General of the Punjab administering the estate actually leased to somebody else and took the rent although it was within the State of Baghat and, according to the law of the State of Baghat where there is an intestacy the State acts as administrator and collects the rents in the meantime. Thereupon, the Manager to the Baghat State wrote to the lessee demanding that the rent should be paid to the State in as much

as the cottage belonged to the State, but was informed in reply that the rent was being paid to the Administrator-General, Punjab, and that the Manager should write to him. Accordingly the Baghat State wrote to the Superintendent, Simla Hill States, requesting him to arrange that the administration of the estate situated in Baghat State territory be granted to the State authorities. The State authorities were informed by the Administrator-General that territories of the Baghat State are for the purposes of administration under the control of the Administrator-General, Punjab, and that therefore the State authorities should in no way interfere in the matter. This claim of the Administrator-General was founded upon a Notification issued by the Punjab Government in 1914 Sir, will you kindly look at Exhibit K (Letter No. 636, dated 15th July, 1919, from Administrator-General to Deputy Commissioner, Simla)? " . . . I have the honour to request you to be so good as to inform the said Manager that the territories of Baghat State for the purposes of the Administrator-General's (Act III of 1913), are within the control of the Administrator-General, Punjab, *vide* Government of India Notification No. 1449D, dated 19th March, 1914, and he should not in any way interfere in the matter. . " That is the claim of the Punjab Government that the State is not to interfere in regard to real property actually situate within the State There is a letter (Exhibit L) from the Administrator-General, Punjab, to the Superintendent of Hill States (No 1208, dater 9th October, 1919), in which he says ". . I have the honour to request you to kindly direct the Manager, Baghat State, not to interfere in the estate affairs of the late Mr Fitzpatrick, which have been made over to me by the High Court at Lahore to administer," and he asks in the last line of the next paragraph that orders may be issued at once to the Manager to get the cottage unlocked. Well, Sir, I very respectfully submit that that kind of thing is wrong The reason I read that first before reading the others is that I wanted to show you the sort of atmosphere that exists with regard to the control of the Simla Hill States The Superintendent regards the whole of those States as properties under his administrative control. There is one quite entertaining demand here (Exhibit Q) This was a State bungalow belonging to Kuthar State. There is an order from the Superintendent, Hill States (No. 815): "I hereby write to say how many rooms and bath rooms are in the Bungalow of Kuthar State and what is the furniture. Report immediately." It it were not that it was the great Government of India one would feel that that was impertinent I do not want to use a word disrespectfully of the Government of India, but these Rulers are Sovereigns within certain limits and this kind of treatment of them makes it impossible for them to govern with success. Government depends upon the respect and veneration, if you like, but at least upon the respect in which the Ruler is held by his people.

Colonel Peel: Was not this house in Simla?

Secretary: This Kuthar House is situated in the heart of Simla, which is British territory, and it was an order of the Court to the man who was looking after the house

Sir Leslie Scott: No, I think you are wrong; I think you may take it quite definitely that this was a bungalow belonging to the State, in

the State territory—quite definitely not in Simla. The Rana of Kuthar has gone back to India, I remember his telling me about it, if I may say so: it was in the State territory; it was wanted, if I remember rightly, for some guests of the Superintendent to go to, to shoot. I remember that, Sir, because I was discussing it in connection with cases where the Political Agent or the Superintendent or whoever he was had issued licences to visitors to shoot over State territory. I know that has been done in some of the Simla Hill States, causing the greatest possible offence to the Rulers.

Now, Sir, will you kindly turn back to the page I gave you, in Volume I, page 270? Suddenly, in 1856, in disregard of the rights of the Hill States and in violation of the assurances that had been given to them, the Punjab Government decided to impose onerous limitations on the Criminal Jurisdiction of the Hill Chiefs Under these new regulations the Superintendent, Hill States, was invested with the power of confirming or annulling the judgments of the Hill Chiefs and cases involving sentences of death were required to be forwarded to the Agent to the Lieutenant-Governor for confirmation. *It is to be noted that no attempt whatsoever was made by the Punjab Government to obtain the consent of the States to this surrender of Jurisdiction.* It was, however, admitted by the Punjab Government (Letter No 567, dated 14th June, 1865) that "strictly speaking, the trial in our territories of subjects of a foreign State for crimes committed in that State is *unauthorised by law*, and it would be also illegal to conduct such trials except under the provisions of the Criminal Procedure Code."

In 1867 there was a similar extension of British jurisdicton to the Simla Hill States in respect of appeals for mercy. I will not trouble to go into the details of the case, but if you look at page 272, Exhibit B, there is a letter from the Secretary to Government, Punjab, to the Lieutenant-Governor's Agent, Cis-Sutlej States, written on 10th December, 1867, No 973 Paragraph 2: "By this Office Letter No. 567, dated 14th June, 1865, the Superintendent, Hill States, was constituted the ultimate Referee in cases not involving sentence of death, but the Lieutenant Governor's Agent was made the ultimate Referee in capital cases" Now, Sir, assuming that the declarations made in 1814, which were the condition upon which the Government received the assistance of all the Hill States in their war with the Gurkhas, which helped them to win the war against the Gurkhas, conferred upon those States a recognition of internal self government, so that the Crown was not entitled to intervene—as would certainly appear from the earlier declarations—then the assumption of power in this way was really to legislate for these States in breach of the relationship.

Sir, I pass now to the next case about the Simla Hill States That is in the same volume (page 540) This relates mainly to the assumption of legal jurisdiction over the area of land adjoining the road on each side, running through the State for a distance of 100 feet on each side of the road, and that jurisdiction has been assumed largely in recent years, in my submission, without any justification whatever. I have analysed all the treaty agreements, or sanads of all the States in the group of Simla Hill States, and can give you the details of it. By your leave we will have it put at the end of the proceedings (Appendix "T")

Chairman: Yes, certainly.

Sir Leslie Scott: The sanads issued by the British Government to many of the Chiefs of the Simla Hills impose on them the obligation to construct and maintain roads in their territories In 1851-52 cart roads were constructed in these hill territories, and the States concerned were required to supply labour and material free of charge. Subsequently elaborate rules for the preservation and control of these roads were framed by the Punjab Government, but no attempt was ever made to obtain the consent of the States prior to their promulgation These rules, which impose onerous restrictions, are now being forcibly applied to roads passing through the territories of the States. And they apply to all the Simla Hill States I think we can probably get the gist of the position best by looking at the documents themselves (page 549). You see Exhibit A shows the rules applied to a very large number of the main roads ("Rules for the preservation of roads in the Hill States under the charge of the Public Works Department, Punjab"). "I. All land now belonging to the roads or hereafter to be acquired, in charge of the Public Works Department, shall be clearly marked out by drystone masonry pillars in charge of the Public Works Department, at distances varying with the nature of the ground II Where cultivation already exists within the 100 feet boundary, such cultivation shall not in any way be interfered with, but no extension of such cultivation will be permitted without the written sanction of the Superintendent of Hill States" I will not pause with the details of the rules, but the last rule but one. "XI Matters in dispute between the Executive Engineer and any State shall be disposed of as heretofore by the Superintendent, Hill States" Now, those are the rules that are laid down If you will look at Volume VIII of Aitchison, page 317, you will find that these sanads, or engagements, were made mostly in the year 1815, going on from then for the next few years, with one or two made in the forties. The first one is Sirmoor, on page 317. You will see, in the 4th paragraph of that sanad, dated 21st September, 1815, the last line, "He will also make roads 12 feet broad throughout his territory" There is no obligation in that sanad to maintain the road, but merely to make it in the first instance. Take the next State, Belaspore, page 319 (6th March, 1815). There is nothing about roads at all in that one You may take it from me, Sir; I have read it through carefully, and I think that is right; but in the Treaty of 21st October, 1847, of the same State (page 322) the second stipulation is, "He shall construct roads not less than 12 feet broad in his State, and repair them when necessary." The next one, Nalagurh (29th October, 1846) (page 324), there is nothing about roads Bussahir (page 326), made on 8th February, 1816, there is a provision in the last line of that sanad "to construct roads on all four sides in his territory four yards in width." I have been right through them, Sir, and in only two out of the whole lot is there an obligation to maintain, and the obligation to construct roads exists in about half, and no more, and it is merely to construct roads 12 feet wide. Now, there is no other basis at all for the right of the Crown to deal with these roads than those terms then made. The Crown to-day is claiming a right for 100 feet on each side of the road and claiming the right within that area, practically speaking, to exclude the jurisdiction of the State to a great extent, as you will

see from one or two of the examples that are given here. Would you please look, Sir, at page 549 (Exhibit B). This is from the Superintendent, Hill States, to the Executive Engineer (No. 631, dated 14th February, 1921) He says this: "1. The P.W.D. have no proprietary right in the land within the 100 feet boundary of the Kalka-Simla road. 2. 'The road limits' refers to the road boundary within the 100 feet of the road on either side from the centre of the road. 3. The land within the 100 feet boundary is not Government land. It was ceded by the States for road purposes but without proprietary rights. The P.W.D. have only the right to object to anything within these limits likely to be prejudicial to road interests. 4. The owners are entitled to compensation for the land proposed to be acquired. This is being enquired into, and I shall be obliged if you will kindly depute an official to point out to the Naib Tehsildar, Simla (on a date to be arranged between you, the Naib Tehsildar, and the Baghat State), and to demarcate the land to be acquired." That statement: "It was ceded by the State for road purposes" I believe to be absolutely erroneous I can find no trace anywhere in Aitchison or any other document of any cession whatever except just those provisions in the *Treaties to which I have referred you, that they will make roads 12* feet wide. You observe that a copy of that was forwarded (No 632, dated 14th February, 1921) to the Chief of the Baghat State for information "It is proposed to acquire a piece of land for improving and cutting at"—a certain point—and the Superintendent "trusts he will agree to the proposals which are for the public good" and asks for somebody to be appointed to settle compensation. Then Exhibit C, the Executive Engineer writes to the Superintendent (No. 291 U., dated 1st March, 1924): "It is reported to me that some of the residents of Sanawar Village in the fourth mile of the Kasauli Dharampur Cart Road have prevented the workmen employed by this Department on the repairs and improvements to this road from quarrying stones and from building walls and from making excavations outside the road and drain. It is clearly laid down in Clause IV of Standing Order No. 161, paragraph 6 46 of P.W.D. Manual of Orders that this Department shall have all rights over the land as shown by the road boundary pillars and land plans on a reference to the plans in this office which are signed by the Deputy Commissioner and the Rana of Baghat. I find that the boundary of the road land at this place is situated 100 feet from the centre line of the road and as our present operations lie well within these limits I would ask that urgent steps may be taken to prevent the villagers from interfering with our work. As an idea seems to be locally prevalent that this department has no right to conduct any operations outside the Road Drain and parapet, and it is many years since the land plans were verified, I have reasons to suspect that many boundary pillars are missing."

With great respect, the P.W.D. Manual of Orders is a document that cannot control these States, and it looks as if the P.W.D. Manual of Orders is one of the sources of error in this matter. The idea "locally prevalent" is a reference to the local knowledge of the inhabitants dating back to the times of the sanads of 1815, that nothing more than a 12ft. road was undertaken by the State.

Colonel Peel: It has some reference to plans signed by the Rana.

Sir Leslie Scott: I know; we have never seen them and have never seen the Manual of Orders.

Then the order of the Superintendent of States upon it (No 1038, dated 19th March, 1924) is: "Copy forwarded to the Rana of Baghat State, Solan, for information and necessary action The wishes of the Executive Engineer should be given effect to immediately" That is an absolute order. Then the Rana himself writes (No 515 W., dated 18th March, 1924). To have taken up a stand as the Rana of Baghat did, I venture to submit, was an act of great courage It is quite a small State, and he has taken a very definite and a very courageous attitude, in my submission. He writes this, second paragraph. "On my English office report, I come to understand that no copy of the Standing Order No 164, paragraph 6 46 of P.W D (Manual of Orders)"—which is the one referred to—"was ever sent to me direct from this department, nor has it come from your office I have got only the rules for the preservation of roads in my office, which are not even so favourable to P W.D. as is understood by the department However, as advised by you, the Executive Engineer, Ambala Provincial Division, may be permitted to use the stone from the new quarry opposite Pandit Kanshiram Kothi on Dharampur Kasauli Road for the benefit of the public road, provided its regular account be kept by any of his subordinates till the matter is settled by you, which may be liable to be seen by any of my responsible officers, otherwise I am inclined to give this quarry on annual contract like other quarries He may also be requested to send a copy of the standing rule as referred to in this letter in the beginning, and of any other too, which concerns this State, so that I might be able to understand the standing order referred to above, and then express my opinion on the question raised by him about which he is likely to write you very soon"

Then the next letter from the Rana (No 763 W., dated 29th April, 1924): "In reply to your endorsement No 1038, dated 19th March, 1924, I have the honour to draw your attention to paragraph 'a'" of the letter from the Executive Engineer, "prohibiting Baghat State not to dispose of any land within the road boundary limits, in respect of which I have seen again the rules for the preservation in Hill States of roads under the charge of the P.W.D, Punjab, which do not contain any such direction, while letter No 681, dated 24th February, 1921 (from the Superintendent, Hill States, Simla, to the Executive Engineer, Ambala Provincial Division, Ambala), the copy of which is attached here, is quite clear; paragraph 3 of which shows that the land within 100 feet boundary is not Government land; the P.W.D. have only the right to object to anything within these limits likely to be prejudicial to road interest." Those are those rules which are quoted in Exhibit A or B presumably.

Then orders are given, and in Exhibit G the Rana writes (No. 764.W., dated 29th April, 1924): "In reply to your letter . . . I have the honour to let you know that a copy of the letter dated 18th January, 1924, from the Executive Engineer, Provincial Division, Simla, to the Superintendent, Hill States, Simla, has reached this office on the 19th April, 1924, in respect of which I wish to draw your attention to the General Rule" and so on, "which shows that all the new buildings below the road must be constructed at a minimum distance of 10 feet from the outer

edge of the road or parapet; therefore I am in hesitation to issue order for dismantling the small room and a staircase as mentioned in this letter till I am satisfied by the Executive Engineer P.W.D. that under what rule he has given such order, while this part of the building in question does not affect the preservation of this Dharampore Kasauli Cart Road, and this whole building is erected with the permission of the said Department"

Then (Exhibit H) the Superintendent writes this letter (No. 3970, dated 8th August, 1924): "With reference to the correspondence . . . regarding the unauthorised structures put up by P. Kashi Ram on the Kasauli Dharampore Cart Road, I write to request that orders may be issued to him to be present at Kasauli on the 15th instant, when I shall decide the case on the spot" That is not right. How has the Superintendent any jurisdiction to decide the case?

Under Exhibit J you will find a formal letter, dated December, 1924, written by the Ruler of the State to the Superintendent: "Referring" to the previous correspondence, "I question the legality of the twelve rules framed for the guidance of Public Works Department to preserve the roads in the Hill States." The chief one is "(b): The State was never a consenting party to these rules. . . . (c): The Superintendent, Hill States, has to preserve as much the ancestral and proprietary rights of the State and its subjects on sites adjoining the roads as he has to preserve the road itself." Then Paragraph 2—this is in answer to Colonel Peel's question: "I may further point out that no plans showing the boundaries and limits of these roads have been produced by the Public Works Department and they have infringed the very first rule of the rules in question 3. The Public Works Department are only in a way custodian of the road limits (to which I object) and have not acquired either under the Land Acquisition Act or by consent of the State the proprietary rights over the lands adjoining these roads . . ." Then paragraph 5: "It would not be out of place to point out that my State is a limited one, and in order to improve it all round it is essential that my rights near the roads should not be interfered with by the P.W.D. Officers as they have recently done by interfering with sanctioned buildings, throwing debris and damaging the ghasni and other lands, belonging to various zemindars, in the Sanawar village near the Kasauli road. 6 I fully associate myself with the P.W.D. Officers in preserving these roads and will always try to help them in promoting this object. In fact, it is for the good of all concerned that the roads should be protected and preserved, and you will never find me behindhand in carrying this out I request you to settle this vexed question finally and protect my rights, as Chief of Baghat, and those of my subjects, and I shall deem it a great favour if you will take up this question at the earliest possible date"

Then (Exhibit K) he writes on the 10th February, 1925 (No. 6265 W.): "I have the pleasure to request that on my last interview with you here, there was a talk between you and me on the subject of 'road limits' within the jurisdiction of the State, then you had made some mention about any road treaty which I am desirous to see; therefore Superintendent Office may be ordered to send me a copy of such treaty and its necessary correspondence, so that I may be able

to get its full knowledge" The answer (No. 813, dated 27th February, 1925) is indeed instructive: "In reply to your letter . I write to say that there is no specific road treaty in regard to your State. In the original sanad granted to Baghat State is a stipulation that the State must keep 20 begaris with the Agent at Subathu Generally, all States are required by sanad to provide roads 12 feet wide in their territories or assist Government in road making when such roads are undertaken by the P W D Baghat must therefore be held to be governed by the general rule in lieu of the stipulation referred to above which has dropped out It was on these considerations that land for the Kalka Simla Cart Road was originally ceded free of cost by Patiala, Baghat, and Keonthal, and following this the rules for the preservation of hill roads maintained by the P W D were issued by Government." Under Exhibit N there is a letter (No 8110, dated 11th September, 1922, from the Superintendent) "It is hereby ordered that on" a certain place "Kuthar State Agent has started building a motor shed without our permission It is required that he should stop doing so, as there is no permission of building any building or extending cultivation within hundred feet of the boundary of the abovementioned road until our sanction is obtained"

There you get the thing perfectly plain Well, Sir, that is the position. I will hand in the tabulated list which I have made, to be printed at the end of the proceedings. Perhaps Colonel Ogilvie will look at this for a moment to see if he approves of it, before it is printed. (See Appendix "T.")

Colonel Peel: Exactly what grievances are there? Can you put it in two words for me?

Sir Leslie Scott: In one word: trespassing

Colonel Peel. But some lands had been ceded, had they not?

Sir Leslie Scott: No

Colonel Peel: They say so

Sir Leslie Scott: I know, and it is untrue. There is not a word about it in Aitchison anywhere and the States absolutely deny it.

Colonel Peel: Not in Aitchison, but there might have been some other agreement.

Sir Leslie Scott: There might have been, but when the Superintendent is challenged to produce his agreement, he says he cannot, and he says there is not an agreement

Colonel Peel: He says there is no treaty.

Sir Leslie Scott: But he put it originally that it was by the treaty.

Colonel Peel: Yes, he says there is no treaty, but he goes on to say that there were some roads actually ceded.

Sir Leslie Scott: I suggest, Sir, that if the Committee feels any doubt about that they should enquire; ask the India Office to ascertain whether there is any document of cession of the land for these roads, and if the Government of India say there is such a document, then perhaps you could furnish me with a copy of it?

Colonel Peel: I see your point, anyhow.

a deep-seated opinion in the mind of the Princes that the tendency for many years past has been to depress the rank and dignity of the Princes, in order to elevate that of the Political Officer, and in order to increase the prestige of the Political Officer. They say: "We do not want to prejudice the position or authority of the Political Officer, but it is not right that it should be done in that way by degrading us in the eyes of our subjects." That gives it a real importance. In my submission, these matters should be handled with the greatest possible delicacy.

Then take the case of Bundelkhand States (page 1250) The gist of their complaint—I am not going to ask you to go through it in detail at all—is that they are being treated as something less than States, in a way that is derogatory. Take a little thing, the ceremony of Itar and Pan. Either it is avoided or dealt with in such a way that an invidious distinction is made between the Chief on the one hand who gives Itar and Pan to the Agent and his staff, and the Political Agent who gives it to the Chief, but calls the office-boy to take it for the staff You will understand what I mean by that phrase That is the point of the matter. The State of Kotah, for instance, particularly brings that point out (page 1255)

In the case of the Limbdi State there is again the question of the old family title. In the old deeds of the State, coming down as late as 1883, he is described as the "Maharana" For some reason or other, the Government made up their minds that they would reduce his importance by calling him a Thakur. These things are very human in a certain aspect, but I am not concerned with that, though it is an important aspect in its way. The point is they affect their powers as governors of the country.

Then Patiala (page 1258) raises the question of the diplomatic exemption, always accorded to Sovereigns, of immunity from Customs Duty, and draws attention to the fact, you will see (page 1263) at the end of the letter (No 2.G. 6897, dated 14th December, 1926, from A.G.G., Punjab States, to Foreign Minister, Patiala) that "the privilege of exemption from Customs Duties is rigidly restricted to Princes enjoying permanent dynastic salutes of 19 guns or more." Well, why not 17?

Chairman: Why not 15?

Sir Leslie Scott: Why not 15? There is no rhyme or reason in it Either it is extended in virtue of sovereignty, and that is the criterion, or it has no justification. Do not think for a moment that I am saying that any legal question is involved in such a matter as that It is a pure question of comity and courtesy. I quite see that you must draw the line somewhere—obviously you must—because there may be elements of sovereignty left in the smallest of the States or of the estates that appear in the Book of Indian States. So you have to draw the line somewhere in these matters.

Then there is a point directly bearing on A. (a) viii, the previous subject, in the case of Rewa, under A. (a) ix, to which I want to draw your attention for a moment It is page 1268. Rewa complains bitterly that, on the succession of the minor Maharaja, a Kharita was drafted announcing the accession, and the Political Agent made the Council, or rather the Maharaja of Rutlam, I think

surrender of a criminal by another State, it had to submit a *prima facie* case to satisfy the Political Agent of that other State and that other State itself. That, as you will appreciate, is the ordinary rule between nations in regard to extradition If extradition is asked for here in London by the French authorities, they have to present a *prima facie* case to a London magistrate That is the ordinary basis of extradition and it is reciprocal and all extradition Treaties are essentially reciprocal in their character There are some extradition treaties between the States and the Government of India, or the Crown, to speak more correctly, but by no means in all cases, in a great many cases, a practice has grown up of a consentual character and if it has gone on long enough I should personally take the view, as a lawyer, that it imported something in the nature of an unwritten treaty. Where there is no protest and it is all done by consent, a case of usage indicates, after a certain length of time and under certain circumstances, the fact of consent, but reciprocity is the essence of the thing as a rule and unless there is a direct arrangement as there is by treaty between the Government and the State in a good many cases, the making of a *prima facie* case on each side is a *sine qua non.*

In some cases by Treaty the State agrees to give up on demand, and the British Authorities agree to give up on demand in some cases, and I would remind you, under the Extradition Act of 1903, it is expressly provided that where there is a Treaty the provisions of the Act are not to override the Treaty. Of course, no Act can in one sense override any Treaty obviously, but the Court of the country where the Act is passed is, in my view, obliged to obey the Act without going into the question as to whether it is breaking the Treaty or not. I think that is the sounder view, though certain writers have put forward the view that the Court may say the Act is *ultra vires* I rather doubt that; I am assuming that is wrong. Section 18 of the Act of 1903, says· "Nothing in this chapter shall derogate from the provisions of any Treaty for the extradition of offenders, and the procedure provided by any such treaty shall be followed in any case to which it applies and the provisions of this Act shall be modified accordingly." So that that, of course, gives statutory power in British India to a British Indian Court. In 1873, the Government of Bombay passed a Resolution (No. 5235, dated 22nd August, 1873), which you will find set out in this case, Exhibit 2 (page 1331). It is the third paragraph that I think is important. "According to the present procedure a State requiring a surrender from another State has, through its own Political Agent, to submit a *prima facie* case which shall satisfy the Politcal Agent of the other State and the other State itself." So there is a record, you see, in a Government Resolution, of what the then procedure was. "It should now be laid down that it will be sufficient for the Political Agent of the State where the offence has been committed to certify that a *prima facie* case has been made out, and it will be the duty of the Political Agent of the State in which the accused has taken refuge, to cause the accused to be apprehended through the Native State, and surrendered without any enquiry, either on the part of himself or of the Native State, into the merits of the case." Now my submission is that as regards what you may call the "surrendering State" that

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Chairman: Extradition

Sir Leslie Scott: Yes I think the convenient order to take it would be to take the case of the State of Cutch first (page 1327) Article 10 of the Treaty of 1819 (Aitchison Vol VII, page 20) is: "The Honourable Company engages to exercise no authority over the domestic concerns of the Rao or those of any of the Jhareja Chieftains of the country, that the Rao, his heirs and successors shall be absolute masters of their territory, and that the civil and criminal jurisdiction of the British Government shall not be introduced therein" Now, Sir, before 1873, whenever a State in the Bombay Presidency required the

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was *ultra vires* of the Government of Bombay. They could not do it. They could not say that Cutch shall give up offenders without satisfying itself through its judicial officers that there was a *prima facie* case against the particular man. No State does it, and they had no right to do it.

Now, that is the big broad complaint made by Cutch and other Bombay States, that although the practice was perfectly clear right down to 1873, it was changed then, and changed unlawfully. Cutch protested, but the present Maharao was not there to protest. As matter of fact, the practice was not changed as regards Cutch till a good many years later. That notification was sent round only to *certain States, and Cutch was not one, as you will see, if you look* at the documents. You observe that it was done as an order, there was in fact no attempt to get the consent and there was no consent given and in 1877—Exhibit 4 on page 1332—Colonel Barton, Political Agent at Cutch (No. 181, dated 19th March, 1877), wrote to Sir James Peile, who was Political Agent in Kathiawar at the time, as follows: "I have the honour to forward you copies of Resolutions . . . . which will, I think, show you that Government have admitted the claim of His Highness the Rao of Cutch, that a *prima facie case* must be submitted to him, even in the case of British subjects, before surrender is made His Highness is therefore entitled to go up to Government when he differs from the Political Agent attached to his court, as to the sufficiency or otherwise of the evidence recorded." Paragraph 3. "You are aware how closely a Native State clings to the practice of any privilege it possesses. Neither the Dewan of Cutch or myself have any objection to the adoption of the principles of Resolution 5235, until a comprehensive scheme as regards extradition generally is adopted by the State The reservation *of the right claimed by His Highness the Rao would in fact remain in abeyance during the minority, but we do not think it* would be fair on the present incumbent of the Gadi, to take advantage of his youth, to abandon the privilege *in toto.*" Then in 1889, Sir, a Resolution, No. 3151, dated 6th May, 1889, of the Government of Bombay was communicated to Cutch: "It has been stated in Government Resolution No. 12, dated 3rd January last, that there has been a further development of committing in the matter of surrender of accused persons since Government Resolution No. 5235, dated 22nd August, 1873, was passed, and as Paragraph 4 of the latter Resolution is calculated to induce objections to such surrender which would not now be upheld, it should be cancelled." *There you* see the growth of Government claims to control, objections which would not now be upheld, though at one time they were held good.

Then there is a letter (No. 512, dated 7th October, 1889) to the Political Agent, Cutch, from the Dewan (page 1335), and you get one or two very important letters here. "With reference to your endorsement No 752 of the 9th ultimo forwarding copy of Government Resolution No 5910 of the 4th September, 1889, I have the honour under instructions of H.H. the Rao to state that Government Resolution No 5235 of the 22nd August, 1873 and No. 5557 of the 19th September, 1873, have never been applied to Cutch"—So they were not applied as late as 1889—"There is no treaty or engagement with this State in regard to the extradition of criminals.

Under the status guaranteed to it by Article 10 of the Treaty of 1819 all matters connected with extradition of criminals from and to this State have always been regulated by principles of reciprocity, as stated in my letter No. 374 of the 27th July last It need not be observed that Government have always very considerably kept in view these principles in relation to this State, and it may be added that the Durbar believes that it is fairly entitled to see *prima facie* evidence when extradition is demanded from it with a view to be able to protect the interest of those to be extradited in the same way as the Political Agent requires the production of a *prima facie* case in support of a demand for extradition of any person from British or other territory." And the answer of the Political Agent (No 937, dated 22nd November, 1889). "With reference to your letter . . . . I have the honour, under instructions from Government, to state that the orders of 1873 are of general application, and were passed in consequence of the Enactment of the Extradition Act of 1872 Under the Act, as under the present Law"—that is the law of 1879—"the warrant for extradition of an accused, who has escaped into British territory, must be issued by the Political Agent, and the certificate of a District Magistrate with regard to an accused who has escaped into a Native State should be accepted" Then the last three or four lines of the paragraph "The mode in which the demand is to be made and complied with is regulated by Treaty or as in the case in question, by a law or order of the Imperial Power interested in the repression of crime throughout India. The mere procedure does not affect the essence of the matter, and there is no reason why a special procedure should be followed with respect to Cutch." Then there is a long and very careful letter (No. 351, dated 21st July, 1890), from the Dewan of Cutch, and in the beginning of paragraph 3 —I am not going to read much of it—it says, "The invariable method of making a resolution or order of Government applicable to any State or States within its political supervision is to direct that a copy of it be transmitted to the Political Agent or Agents of the State or States to whom it is intended that the Order shall apply." —and he points out that the Order of 1873 was expressly not sent to the State of Cutch, and therefore there is no warrant at all for saying that it was of general application, and therefore applied to Cutch, and he protests against that view of paramountcy expressed in the last sentence of the letter that I have just read.

That is the dispute, and I think that sufficiently defines it for your purposes, Sir. The result of it all is as stated in a Memorial sent in by His Highness of Cutch, Exhibit 17 (page 1341), dated 15th December, 1890. The answer (No. 1072, dated 28th August, 1891) is on page 1344 "I have the honour to inform you, in reply to the representation from H.H. the Rao, received with your No 622/A of the 15th December last, that the Government of India can see no grounds for considering that the Durbar has any just cause of complaint as to the effect of the orders to which H.H. the Rao takes exception The interlacing of jurisdictions between the numerous Native States and British territory in the Bombay Presidency, makes it impossible in such matters to draw any parallel between those Native States and others situated elsewhere. Experience has shown the Government of Bombay that adherence to a rule requiring the

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Then there is a letter (No. 542, dated 7th October, 1889) to the Political Agent, Cutch, from the Dewan (page 1335), and you get one or two very important letters here. "With reference to your endorsement No 752 of the 9th ultimo forwarding copy of Government Resolution No. 5940 of the 4th September, 1889, I have the *honour under instructions of H.H. the Rao to state that Government* Resolution No. 5235 of the 22nd August, 1873 and No. 5557 of the 19th September, 1873, have never been applied to Cutch"—So they were not applied as late as 1889—"There is no treaty or engagement with this State in regard to the extradition of criminals.

Under the status guaranteed to it by Article 10 of the Treaty of 1819 all matters connected with extradition of criminals from and to this State have always been regulated by principles of reciprocity, as stated in my letter No 374 of the 27th July last. It need not be observed that Government have always very considerably kept in view these principles in relation to this State, and it may be added that the Durbar believes that it is fairly entitled to see *prima facie* evidence when extradition is demanded from it with a view to be able to protect the interest of those to be extradited in the same way as the Political Agent requires the production of a *prima facie* case in support of a demand for extradition of any person from British or other territory." And the answer of the Political Agent (No 937, dated 22nd November, 1889): "With reference to your letter . . . I have the honour, under instructions from Government, to state that the orders of 1873 are of general application, and were passed in consequence of the Enactment of the Extradition Act of 1872. Under the Act, as under the present Law"—that is the law of 1879—"the warrant for extradition of an accused, who has escaped into British territory, must be issued by the Political Agent, and the certificate of a District Magistrate with regard to an accused who has escaped into a Native State should be accepted" Then the last three or four lines of the paragraph "The mode in which the demand is to be made and complied with is regulated by Treaty or as in the case in question, by a law or order of the Imperial Power interested in the repression of crime throughout India The mere procedure does not affect the essence of the matter, and there is no reason why a special procedure should be followed with respect to Cutch." Then there is a long and very careful letter (No 351, dated 21st July, 1890), from the Dewan of Cutch, and in the beginning of paragraph 3 —I am not going to read much of it—it says, "The invariable method of making a resolution or order of Government applicable to any State or States within its political supervision is to direct that a copy of it be transmitted to the Political Agent or Agents of the State or States to whom it is intended that the Order shall apply" —and he points out that the Order of 1873 was expressly not sent to the State of Cutch, and therefore there is no warrant at all for saying that it was of general application, and therefore applied to Cutch, and he protests against that view of paramountcy expressed in the last sentence of the letter that I have just read

That is the dispute, and I think that sufficiently defines it for your purposes, Sir The result of it all is as stated in a Memorial sent in by His Highness of Cutch, Exhibit 17 (page 1341), dated 15th December, 1890 The answer (No 1072, dated 28th August, 1891) is on page 1344 "I have the honour to inform you, in reply to the representation from H H the Rao, received with your No 622/A of the 15th December last, that the Government of India can see no grounds for considering that the Durbar has any just cause of complaint as to the effect of the orders to which H H. the Rao takes exception The interlacing of jurisdictions between the numerous Native States and British territory in the Bombay Presidency, makes it impossible in such matters to draw any parallel between those Native States and others situated elsewhere. Experience has shown the Government of Bombay that adherence to a rule requiring the

production, to support every demand for extradition, of papers constituting a *prima facie* case against the person charged, causes undesirable delay in the surrender of the offenders, and offers facilities for escape of criminals wholly disproportionate to any advantages which the observance of such formalities can possibly secure It has accordingly been deemed necessary to require "—note that word, Sir, " require "—" Native States to give up fugitives from justice seeking asylum in their territories upon the production of a warrant issued by a competent British Court, accompanied by a certificate to the effect that a *prima facie* case has been established " Now Sir, you will observe that that is a totally different thing. That is a certificate of the State asking for extradition, and that does not meet the case at all. It is totally irrelevant, because the State asked to surrender is entitled, as a matter of justice, to see that there is a *prima facie* case before it drives out of its protection a person within the protection. That is the gist of it It shows very clearly, in my submission, how for reasons of practical convenience which may strike the Administration more than the drawbacks of a practical kind, you get a course of conduct initiated, the protests of the State really disregarded altogether, and no attempt made to solve the question by the only method that, in my submission, is the right one—find out what are the rights and wrongs, then, having ascertained that, if they do not cover the case from the point of view of practical convenience, say to the Chamber of Princes " Now let us have a talk about this around the table and let us come to some sound practical arrangement "

I take the next cases shortly, because the last one was very illustrative Bansda (page 1323) is the same point The first objection against the form of this Resolution—that is the one of 1873—is that the Rules laid down therein were not framed with the consent of the States concerned, and the consequence is that the sovereign right of the State, in whose jurisdiction the accused is to be found to determine whether he should or should not be surrendered has been taken away from the States and vested in the Government of Bombay or India through the Political Agent of the State demanding extradition. This can be illustrated by quoting a recent instance in which the Durbar, having been asked to surrender a particular person to the Baroda State, requested the Political Agent to ask the Resident at Baroda kindly to forward the papers establishing a *prima facie* case (No. 47, dated 24th April, 1927) The Political Agent's reply (No P D./Extra 3, dated 28th May, 1927) leaves the Durbar no choice and yet it is in their independent jurisdiction that the alleged accused person had found harbour The sovereignty of the Durbar is in a matter of internal Government subjected to the orders of the Paramount Power, which is wholly wrong

Then Gwalior (page 1345) The points raised by Gwalior are these 1. There is no Extradition Treaty as such, but all the treaties with the States are on a general reciprocal basis 2 By old established usage there has been complete reciprocity between the State of Gwalior and the British Government down to just before the War—well into this century. 3 Shortly before the War claims were put forward for the surrender by Gwalior of offenders without producing to the Gwalior Courts any *prima facie* case. 4 The Political Officers sought

to justify that on the basis of an alleged general right of the Government of India—I suppose based on paramountcy. 5. The Gwalior State put forward the demand that that unjustifiable claim, as they contended, should be repudiated by the Government of India 6 That demand was ignored by the Government although it made the concession of reciprocity in general terms, but it coupled this concession with certain conditions, quite irrelevant to extradition, for which there is no foundation in law, about jurisdiction, and I will deal with those.

Now those are the main points of the Gwalior memorandum I will just ask you to look at one or two of the documents and only one or two. If you look at the letter No 367/34/08 (page 1349) written on 18th February, 1908, by Lieutenant Colonel Newmarsh, the Political Agent in Malwa to the Gwalior Vakil "In reply to your letter . . . . I have the honour to inform you there is no section of the Extradition Act No 15 of 1903, which requires me to send you the *prima facie* evidence against any person whose extradition is required by me 2 The Act in question does not apply at all to Gwalior territory and is irrelevant to the demand made in my letter No 142C, dated the 26th January, 1908, for the extradition from Gwalior territory of Mangia, son of Mangtu, and Narain, son of Godhar. 3. I request therefore that these persons may now be extradited without any further delay 4 If I consider the *prima facie* evidence sufficient, that opinion should be enough to justify the extradition and trial of the accused persons by a British Court If the Judicial Secretary of the Gwalior Durbar does not agree with me, I hope he will first surrender the accused required in this case, to save inconvenience, and then discuss the general question hereafter." Well, Sir, that is a bit tall After complaint has been made the Resident—Exhibit 3 (d) (page 1350)—writes (No 106C, dated 22nd March, 1908, to the Judicial Secretary to the Gwalior Durbar). "It seems to me that the Political Agent's action in the matter is perfectly correct, and I cannot understand by what authority the Durbar Vakil claims the right of seeing the *prima facie* evidence and deciding whether the case is extraditable or not" It is topsy turvy, to use a metaphor that I have used before, of a strictly legal character That is the position

On page 1352 the Political Member writes a long letter (No 8412, dated 14th May, 1921), to the Resident in Gwalior, that is 13 years later. It is a carefully reasoned letter May I ask the Committee respectfully to read that letter rather carefully If you look at the last sentence of it you see he asks for the views of individual political officers to be put on one side and get the thing on to the basis of principle Then you get the answer from the Resident (No 2443, G. 241-1921, dated 21st December, 1922) "2 The Political Secretary to the Government of India, to whom the matter was referred for the order of the Government of India, informs me that the actual position is that, with States such as Gwalior, extradition arrangements are on a basis of reciprocity in all ordinary cases, but this principle is, however, subject to the following exceptions" Now these are the exceptions about jurisdiction which, I respectfully submit, are quite irrelevant to the discussion of extradition: "(1) The exercise of Civil Jurisdiction over European British subjects and aliens (whether

European, American or Japanese) is subject to the control of the Government of India Criminal jurisdiction over such persons is exercised by officials of the Government of India." My submission, as you know, is that that does not conform to the true rights of the Paramount Power at all. "(ii) In virtue of their position as the Paramount Power, the Government of India claims (a) the power to demand the surrender of any class of offender from an Indian State"—that is without any proceedings at all.—"(b) The right to demand for trial British subjects and servants of the British Government who have committed offences in the States. (c) The right to refuse extradition in the cases referred to in rules 3 and 5 of the Extradition Rules (vide Foreign Department Notification, No. 1862, I.A., dated 13th May, 1904). There is also an exception, perhaps more apparent than real, in regard to extradition of deserters which, it is believed, is well known to Durbars. 3. He adds that the question of extradition has recently been examined by a committee appointed by the Standing Committee of the Chamber of Princes and it is understood that their report will be submitted shortly and that the views of the Chamber of Princes on the subject will receive full consideration at the hands of the Government of India when they are received." Of course, that is the right procedure, to try and come to some arrangement As a matter of fact, I think no arrangement was come to, but the view of the Princes is that all these matters are matters for arrangement and cannot be done without their consent. That I think covers the whole of the ground that is necessary in the Gwalior case.

The next case is that of Patiala (page 1359) This I need not read in detail; it is a very interesting point Libel, seditious libel and that type of offence, is not in the list of offences attached to the Extradition Act as an extraditable offence But it is obvious that under existing conditions in India it may be very convenient for the Government to have a person guilty of that particular offence extradited from a State, and *vice versa*. You will find in the Patiala State memorandum here a case where at request of the Government of India (No. 2 J. 7106/240 B. 23, dated 1st November, 1923, from the Secretary to the A.G.G., Punjab States, to the Foreign Secretary, Patiala) the State gave up an offender of that type, pointing out that it was outside the general practice, but did it on the basis of anticipated reciprocity (Letter No 342 C., dated 10th December, 1923). Then some gentleman libelled the Patiala State and His Highness the Maharaja of Patiala in a very grave and dangerous way, in a newspaper published in Delhi ("Riyasat"), copies of which I infer from the memorandum were sold in the State of Patiala. Patiala asked the Government (No 467 C., dated 16th December, 1926, to the Secretary to the A.G.G., Punjab States) to assist in extraditing this person in order that he might be dealt with, as what he had done was gravely prejudicial to the authority of Government in Patiala, and the Government of India refused (No. 772 R/P 42-26, dated 24th December, 1926). That is the whole case. I will not trouble to go into it in detail

Then the case of Rewa is on page 1367. These cases of Rewa which are set out in some considerable detail merit careful perusal. I hesitate to tell you that there are 27 pages of them, but if I may

give you the headings I think you will agree that they may be instructive on the matters in question. The first head relates to thefts of lac. As you know, lac is grown upon certain trees in Central India, and Rewa has found by experience that the Central Provinces have, practically speaking, made it impossible to get extradition of any offenders charged with stealing lac. The Central Provinces (No 1674/1549-11, dated 27th December, 1924, to the A.G G, Central India) put up the answer that lac is unidentifiable You cannot identify one piece of lac from another. Well, that is equally true of cash; it is equally true of wheat and many other articles which are habitually the subject of charges of larceny. It is essentially a matter to be considered by the extraditing Magistrate as to whether a *prima facie* case is made that that lac was the property of Rewa and stolen by that prisoner. It is not a matter that can be dealt with by any general *a priori* rule in advance. Lac is the property of the State in Rewa, it being a Government monopoly, and all lac coming out of the State of Rewa is the property of the Government. It has an exclusive monopoly of all lac. It says, therefore, that to say there is difficulty in proving the ownership is absurd, provided you can prove that it came from Rewa, and that is a matter for the Magistrate to deal with on his own appreciation of the particular facts As a matter of fact, I think you will see from the case that the Political Agent did not agree with the attitude of the Central Provinces Government in the matter and thought that extradition orders ought to be made

Will you kindly look at Exhibit 3 (Letter No 1715-23, Ex A, dated 9th August, 1924, from the Secretary, Rewa Durbar, to the Political Agent, Baghelkhand) to see how serious this is from the financial point of view? Paragraph 10: "To show how serious the matter is from the Durbar's point of view, I give below the net income to the Durbar from the sale of lac and refined lac (manufactured from State lac) during the last two years —1921-22, Rs. 9,86,894, 1922-23, Rs 8,78,770." Well, that is a very large business "The Durbar keep strict watch over the forests where lac is grown and offenders are as far as possible apprehended within Rewa territory But it is not possible always to make certain of their arrest within the State, and hence the need of extradition which is recognised in all civilised communities. If complete immunity from surrender to the Durbar is assured to lac thieves (which is virtually what the position is, as shown in the letters referred to), no amount of watch and ward within the Rewa State can cope with the gangs of thieves The forests are not confined to the State. They continue into British India, and a thief, after the commission of an offence, has only to cross a river, or a 'nala' or perhaps an imaginary line, to ensure his safety. The knowledge that such offenders will not be extradited will have most disastrous results, and will in all probability lead to the formation of dangerous gangs on the border who will come prepared to resist all opposition and pursuit within the Rewa territory, knowing full well that once they have crossed the border they will be free men Unlawful removal of the Durbar lac, which has already assumed alarming proportions, will go on with more vigour than before, and the Durbar will be a helpless spectator. This is a state of affairs which the Durbar cannot contemplate without dismay."

I would like to read one sentence from a letter from the Political Agent to the Secretary, Rewa Durbar (No 3101/418-23, dated 16th July, 1925), commenting on the attitude of the Central Provinces Government: "It may be that in the background lies their distrust of the Rewa Courts but the letter does not commit the writer to any such opinion and the Roy case should, in Mr. Glancy's opinion, help to dispel any such suspicions." That was a case that had been tried by the Rewa Courts; a great deal of bother was made about it, you will see, and he was acquitted by the Rewa Courts. That is the Lac case

Then the second heading is about the theft of cattle in respect of which the Rewa Courts were asked for extradition. It is a very long correspondence, and I am not going to read it. At first you may think perhaps that the Central Provinces put up a good point on the matter, but, on looking through it, I think, you will see there is nothing in it at all However, I am not going to say anything more about it than that.

Then there is the case of Mr Roy, which you will read there, and *I will not trouble about that now. The real point that is made in* the Rewa memorandum is that they get perfectly reasonable treatment from the United Provinces Government, and most unreasonable treatment from the Central Provinces Government, and they say so with perfect candour. The relevance of that, of course, is that, in our submission, that kind of want of uniformity in building up a sound standpoint might be prevented by the Government of India itself. What would be the position of the States if the Provinces were to be completely independent of control by the Central Government I do not know. That is the end of that chapter.

Then heading A (a) xii is as to public officers: "Refusal to recognise Indian State Officials as public servants"

Chairman: In British India

Sir Leslie Scott: In British India. There is no reciprocity on the matter The British Indian officials are recognised in the State as public servants, but not *vice versa*, and it is a matter of great practical importance As you know, the interlacing of the States with British India means that the Police, particularly in British India, have to cross State territory in pursuit of criminals, and *vice versa*. There are many occasions on which the State Police and officials have to go into British territory by request of the British Indian Authorities They also have to join the British Indian Police in dealing with the gangs of dacoits, and so on. In the case of an affray with a gang of dacoits, if there are half-a-dozen State Police and half-a-dozen British Indian Police, and the dacoits attack the body of joint Police with lethal weapons and do them bodily injury, the offence *qua* the State policeman is the simple offence of assault, or whatever it may be termed, but it is the very serious offence of attacking a public officer on duty in the case of the British Police. That affects the *morale* of the force. It affects their power to do their work; and, for obvious reasons, there ought to be reciprocity It is said that it is not easy to pass legislation that is effective for the purpose, but I wonder whether the Government has ever tried I venture to suggest it is quite an easy thing to do All you want is

an Enabling Act, enabling the provisions of Clause (7) of Section 21 of the Indian Penal Code to be applied by the Government to the officers of any particular State by arrangement with that State I am perfectly certain that you can do it. It is quite feasible, in my judgment.

Chairman · We see your point on that

Sir Leslie Scott I should be glad if you will look through the cases which are mentioned in reference to this, because they are carefully put together, and a very strong case is made

. Then we come to heading A (a) xiii. "Restrictions on the employment of non-Indian Officers." Would you look at the case of Rewa first (page 1427)? The Durbar's contention on this point is that there is in their Treaty (Aitchison, Vol V, page 238) no provision that permits the Paramount Power to impose any such restriction It may, and with some reason, be argued that Treaties entered into over a century ago cannot deal with every question that may arise out of every-day relationship, and that mere silence on any given point does not necessarily imply freedom from all restriction in the matter But while this argument may perhaps be accepted on questions about which all the Treaties are silent, or about matters that could not have been contemplated when the Treaties were concluded, as, for instance, the control of wireless telegraphy—it is impossible to admit its force in the present case, for, though the Treaties of Rewa are silent on this point, a number of Treaties entered into with various other States at about the same time do contain explicit stipulations on the subject. In support of this Article 6 of the Treaty of 1798 with the Nizam of Hyderabad (Aitchison, Vol IX, page 3), Article 7 of the Treaty of 1799 with Mysore (Aitchison, Vol IX, page 224), Article 7 of the Treaty of 1804 with Scindia (Aitchison, Vol IX, page 52), Article 6 of the Treaty of 1805 and Article 13 of the Treaty of 1818 with Holkar (Aitchison, Vol IV, pages 168 and 172), and the Treaties of 1803 and 1805 with Dholpur and Bharatpur respectively (Aitchison, Vol III, pages 294 and 277) may be read The Durbar feel, therefore, that they have full reason for saying that in the absence of any provision in their case, any restriction is a distinct breach of the terms of the Treaty, since the quotations from other Treaties of a similar date prove that the question was one which had arisen and had been fully considered in other cases I have made an analysis of these provisions in Aitchison It is a pretty exhaustive analysis, showing the cases in which there is a provision on the subject and those in which there is not As a matter of fact, in the same analysis I have included, in another head, under a separate column, those cases where British jurisdiction over Europeans is dealt with I think it would be convenient for you to have that in tabular form if you will just treat it as my personal extract from Aitchison, and, therefore, remember that it may contain errors

Chairman: Certainly It would be convenient if that could be put on the evidence (vide Appendix "V")

Sir Leslie Scott Then, if you turn to the Exhibit, you will see it is a copy of a letter from the Political Agent in Baghelkhand to the Secretary of the Durbar (No 3759A/353-20, dated 3rd September, 1927): "The proposals to which the approval of the Durbar was

conveyed in their letter . . . . of 17th April, 1925, were only proposals as approved by the Chamber of Princes and have not as yet been promulgated in the form of a Government Resolution. Consequently the previous orders on the subject must be considered as still in force and, if His Highness decides to employ Mr. Tristram, I shall be obliged if details are supplied to me to enable me to obtain the formal sanction of the Honourable the Agent of the Governor-General in Central India" Now, Sir, that means this. One of the 23 points which were considered in the Conference between the Political Department and the Standing Committee (November, 1924), with a view to trying to get agreement on political practice, related to the employment of Europeans, and a summary was prepared by the Government, criticised by the Princes, amended, circularised, and so on, and the Political Agent here is saying that the discussion never got beyond discussion and never resulted in anything that was binding, and I ask you particularly to note, because that is the view that I desire to submit to the Committee as regards all those various discussions that took place upon all those various subjects that were discussed. Approval was given, not in the sense of entering into an agreement, but approval of proposals saying that we shall be *prepared to accept proposals on these lines hereafter with satisfaction* and leaving outside, of course, any individual cases where there was an actual Government Resolution published, which comes under a different category It may be binding or it may be not binding; it depends on other considerations. I think the true view of all those Conferences which took place, which fill, as we know, so many volumes, is that they were endeavours to ascertain what proposals on the various subjects would be mutually satisfactory, and that is the stage which those proceedings had reached when the decision was taken to appoint your Committee, Sir, and that those proceedings cannot be taken as binding in any sense

Then next Patiala, under this head (page 1419) The real big point made by Patiala is that prior to the year 1879 there were no restrictions on the employment of Europeans or aliens by the Patiala State They submit that under their Sanad of 1860 it is quite clear that there was no such limitation, but in April 1879 a Murasla, dated 9th April, 1879, addressed to Sardar Dewa Singh, President, Council of Regency (note it was during the Minority), was received from the Punjab Government, which stated: "An order was received from the Government of India to the effect that whenever a European or a Eurasian be employed in any of the Indian States having relations with the Punjab Government, sanction to this employment should invariably be obtained from His Honour the Lieutenant-Governor of the Punjab. Through an oversight this was not communicated to the Patiala Government Now, under orders of the Lieutenant-Governor, it is being intimated that the instructions of the Government of India should always be followed in the matter" Patiala submits that there was no right to give that order, no basis of any kind upon which their right to employ whom they liked could be interfered with. Then the matter as you know was dealt with further; I will not go into the details of it because that raises the question I should like to add that in 1911 restrictions on the employment of Eurasians were cancelled.

Then Jodhpur (page 1414); just one reference there. In 1913 the Resident writes to the Senior Member of Council (No. 4888, dated 10th October, 1913): "I have the honour to inform you that cases have come to the notice of the Government of India, showing that some misapprehension exists as to the rules and conditions which govern the employment by Durbars of Native States of persons in the service of Government, pensioners and Europeans (including Americans and Australians)"—South Africans are apparently left out.—"The Governor-General in Council has, accordingly, decided to issue the following revised regulations on the subject The persons, with whose employment in Native States in India the Government of India is concerned, fall generally into three classes namely — (a) Persons, whether Europeans or Indians, who are in the service of Government; (b) Persons, whether Europeans or Indians, who are in receipt of a Government pension, (c) All persons (other than Indians or Statutory natives of India) who are not in the service of Government." Now, Sir, persons in the service of Government are, of course, in the control of Government in the sense that Government can forbid them to take service elsewhere, but the order must be directed to the Government servant, and not to any employer. The Government of India may, for instance, think it very undesirable that a Government servant should be employed by Turkey, but the Government of India cannot issue an order to Turkey not to employ him, and the same applies to the second category. As regards the third category I submit that there is no power at all to give any orders to anybody. In the past one reason advanced for dealing with this subject in this way has been that some States have been defrauded by adventurers—well, that is a laudable object, but if that be the ground, the States are quite willing to take the risk of it, or if the Government think that it interests them in any way on the ground that there may be possible disloyalty in an individual so employed, they are perfectly willing to discuss the question as they did before at a round-table conference and come to some reasonable arrangement, but they do submit respectfully that there is no power to give orders unless the Treaty provides something on the subject, and then the Treaty comes in That is all I want to say upon that head

May I just dispose of a little matter that was left over from last time, that I ought to have disposed of at the beginning to-day and I forgot it It was in the last volume I apologise for forgetting it. Under the head of "Minority" Sir, in Volume II (page 1145) You remember I told you about the case of Bansda and the purchase of the village by the Governemnt from the State for 500 Rupees I ought to have told you, Sir—it was in my mind and it simply slipped my memory at the time, that the impropriety of the transaction was recognised by the Secretary of State who set it aside Exhibit I (1) (Letter No. 291, dated 26th June, 1891, from the Agent to H E the Governor at Surat, to the Raja of Bansda) "As the Raja, on coming of age, has expressed himself dissatisfied with the arrangement, I am of opinion that, in view of all the circumstances, it should be treated as if it had been originally adopted as a contemporary measure to last only during the minority of the Raja The result of this will be that the Raja will be placed in the position in which he would have stood if the sale of 1877 had not taken place, and that

it will be for Your Excellency's Government to make arrangements with him for the permanent acquisition of the village in question, *if you should think it advisable to do so*"—*That is the right line*; that is precisely the contention that I was putting up to the Committee, Sir.—"The Raja is further informed" (this is not the Secretary of State. this is the Government of Bombay) "that a liquor shop must not be established at the Pass" Well, they could not get it all. What right had they to say that a liquor shop must not be established at the Pass?

In the State of Gwalior, under the same head (page 1161), I want you to look at those cases marked B and C with some care The first point is under B, that the Political Department totally disregarded the findings of the Chief Justice of the State in a matter that was within his competence, and improperly interfered on a vague claim of Paramountcy, which I submit is inadmissible The second one, Case C, is one of great importance which the Chairman of the Committee, I know, will appreciate, because religious sentiments were involved. Tanks where no fishing was allowed, on religious grounds, the State never allowed it; the Political Officers authorised fishing *in the sacred tank (vide letter No. 251 C, dated 1st February, 1894,* from the Assistant to the A G.G, Central India, to the Resident at Gwalior). What is the result? The result, of course, is that the subjects of the State say to the State Authority "This is dreadful; you never allowed it; how is it that you let these people do it where you would not; is it because you are not masters in your own State?" That is the real drawback of that kind of thing, Sir.

Minutes of Evidence given before the Indian States Committee at Montagu House, Whitehall, S.W.1.

Tuesday, 6th November, 1928, at 3.15 p.m.

PRESENT:

Sir HARCOURT BUTLER, G.C.S.I., G.C I.E , *Chairman.*
Colonel The Honourable SIDNEY C PEEL, D S O.
Professor W. S HOLDSWORTH, K C.
Lieutenant-Colonel G. D. OGILVIE, C.I.E., *Secretary*

Their Highnesses the MAHARAJAS of KASHMIR and PATIALA and the MAHARAO of CUTCH

The Right Honourable Sir LESLIE SCOTT, K C., M P., appeared on behalf of the Standing Committee of the Chamber of Princes.

Sir Leslie Scott: Head A (a) xiv, page 1429 of Volume III, "Restrictions upon Arms and Ammunition." I will take the case of Nawanagar (page 1443) first because that covers a good many points. You observe, Sirs, that the Memorandum of Nawanagar begins with a reference to a Resolution of the Government of Bombay on 21st May, 1872, in which it was laid down by the Government of India that the

Chiefs of Kathiawar are "bound to preserve peace and order in their territories, whether the disturbers are their subjects or those of adjacent Rulers and it is clearly the duty of the protecting power to enforce this obligation." The States recognise that that is a duty attaching to every State but they say that, in order to perform it, it is essential that their troops and their police should be efficiently armed and that the restrictions upon the obtaining of arms imposed by the Government of India make it impossible to carry out that duty efficiently. Indeed, in many cases their Police forces are so inadequately armed that they cannot keep order as they ought to The morale of the troops is affected and in many cases there has been loss of life amongst their police simply and solely because the brigands, with whom they have to cope, have good arms and the police have utterly ineffective arms. The case of Nawanagar brings it out clearly I had hoped that the Jam Sahib himself might have said a word or two on that I remember when I was out there being particularly struck with his telling me that they have some bands of brigands in the hills who have got absolutely the latest up-to-date weapons The only weapons their police had were entirely obsolete rifles and that many of these rifles had blown up in the hands of the police causing casualties to the men who carried them

In places the State is surrounded by criminal tribes, it has also certain turbulent classes among its subjects It has had to deal with the *charans* who had become lawless and had defied the authority of the State for several years, and looted and terrorised the subjects of the State These outlaws refused to obey the State rules and regulations and had to be dealt with severely Similar trouble was caused by other turbulent classes The Police force of the Nawanagar State consists of about a thousand regular constables, in addition to the village Police force, which is also considerable Besides these there are Arabs and Makranis in the State in charge of several public buildings. The total supply of arms as it stood before 1917 was as follows —300 old M L guns issued before 1873, 250 old M L guns issued in 1873, 300 old M L guns issued in 1873, 200 old M L. guns lent to the State in 1899 All those are useless guns which serve no purpose at all, and several accidents have occurred in the course of the last few years, injuring the constables using them But in spite of repeated requests of the Durbar there was no increase in the supply for 70 years until 1917, when the increase was quite inadequate In 1910 an attempt was made by the Nawanagar State to obtain a large and more efficient supply A letter (No 1401, dated 2nd June, 1910) was addressed to the Agent to the Governor, pointing out the difficulties of the State, and requesting the Agent to recommend to the Government of Bombay the necessity of granting 967 S B Martin-Henri guns by three or four annual instalments In reply (No 3108, dated 21st June, 1910) the Agent requested the Dewan of the State to forward an indent, together with information as to the proportion of the police which it was deemed necessary to arm with firearms The request of the Agent was complied with, but far from recommending the case to the Government of Bombay, the Agent to the Governor decided (Letter No 955, dated 8th March, 1911, from the Political Agent) that there was no sufficient ground to justify an increase in the armament of the State, and that the

indents should be reduced to the lowest possible limit compatible with the reasonable efficiency of the police force It was also laid down that the total number of firearms in possession of the force should not exceed 31 for the mounted police and 748 for the foot police. A proviso was expressly added "that the issue of new arms will be contingent upon the return of an equal number of old arms to the Government arsenal" It was also pointed out that it appeared from the statement forwarded by the State, that the State had on different occasions been supplied with a total number of 1,050 S.B M.L guns, while the number in hand had been shown as 940, and the State was asked to account for the absence of the remaining 110 guns—a perfectly reasonable request. In reply (No. 1720, dated 24th May, 1911) the Dewan of the State informed the Political Agent that 91 out of the 110 guns previously not accounted for, were being used by the Revenue Pasaetas The reply of the Political Agent (No 4129, dated 22nd August, 1911) conveyed the decision of the Agent to the Governor, that it was not necessary to arm the village police or the Revenue Pasaetas, and therefore their requirements should not serve as a ground for the return of a smaller number of arms. Negotiations continued between His Highness's Government and the Agent to the Governor for some time but not beyond references, explanations and re-references. No substantial result ensued. While this correspondence was going on, a second effort was made in 1913 (No. 2310, dated 8th May, 1913, from the Dewan to the Political Agent) to secure a smaller supply of arms as an urgent measure, and fresh indents were forwarded in order to equip properly the Police Force of the State You find under Exhibit K a personal letter from the Jam Sahib (No 322, dated 24th August, 1919, to the Political Agent)· "2 I strongly urge upon the attention of Government that the State Police and the Infantry are very short of guns, and the requisition made by me to the Agent to the Governor in my letter No. 224 of the 7th August, 1917, represents our minimum wants at the present moment I may state that when making that requisition the great European War was in full swing, and we had to bear in mind the very great strain on the arsenals and on the stock of arms available for distribution. We are also awaiting the decision of the Government of India on the general question of giving arms to the Indian States. I had on these grounds limited the present demand to the lowest possible figure, leaving the question of adequate arming of the State Forces to a more propitious time, when a larger supply of arms may be available and a liberal revision of the policy of Government, to which we are looking forward since the cessation of war, may take place, in appreciation of the services rendered by the Indian States as also of the conditions in the country, which certainly require sufficient police and military strength to ensure good government and peaceful existence to the people Our present demand was therefore provisional, and the supply of 362 carbines in exchange for 500 unserviceable arms, instead of an equal number, as is the usual and equitable practice, would reduce the small number that possesses arms by 138 This looks a small number on paper, but I would leave you to imagine the situation if my districts were deprived of 138 guns in these times of high prices and consequent general unrest. The guns are no doubt useless, but it

does not require any stretch of imagination to guess the effect of an armed policeman, replaced by a baton holder, in the Mahal Towns as also in distant villages of the Baradi and Kalyanpur divisions" Then the matter had to be taken up further; a fourth attempt was made. The Political Secretary addressed a letter (No. 617, dated 25th November, 1922) to the Agent to the Governor pointing out: "I am not aware of the views of His Highness on the proportion laid down, viz., one to every 3,000 of the population, but I cannot avoid the feeling that the ratio proposed is very inadequate and falls much below the requirements for minimum safety in a large area inhabited and surrounded by unruly and turbulent people . . . . ." That is the real point, Sir, of the thing.

My submission, Sir, is that this whole business of arms for the Police has to be put on a different basis. The Government, I think, are disposed to agree it in principle. You see that in Political Department Memorandum No 5216, dated 13th July, 1922. "The Government therefore agree in principle that the time has come for the adoption of a more liberal policy" But the thing has got to be done, Sir There can be no reason against giving efficient weapons to the State both for their troops and for their Police, except two that I can see One is distrust of the loyalty of the States, and I say that that is obviously a reason that must be ruled out to-day; nobody is going to suggest that for a moment; and the other is the danger of arms getting into wrong hands. Well, there is no more danger of that in the States than there is in British India if the weapons are in the hands of the Police or the State troops, and it is such a remote risk that it cannot weigh in the balance against the imperative need of arming these Forces properly. The present system, in my submission, is one that is incompatible with the good government of the States Law and order cannot really be preserved and the authority of the State cannot be maintained If there are any difficulties, it is a matter obviously for a joint conference and joint measures by identical legislation, it may be, in the States and in British India When the Jam Sahib is here, perhaps you will allow me to ask him a question about it, so that you can get the reality of the thing from him

The next is the case of Indore (page 1434) I merely mention it and no more. I will not trouble you to read it. The gist of it is that down to 1872, the State of Indore, with its 2,000,000 inhabitants, had a factory for arms where it made various weapons, including some cannon It was then ordered to cease manufacturing (vide Aitchison, Vol IV, page 190), and it obeyed the order Well, I recognise that if an Indian State was to start a factory in the nature of Woolwich Arsenal, it would raise questions of policy I do not for a moment suggest that it is compatible with the position of the States in India that they should generally be arming themselves to an extent which could only be needed if they had the intention to use their arms for external purposes Obviously, the line must be drawn, as a matter of degree, somewhere I do not want to discuss the question as to whether a State is entitled as of right to have a factory for cannon, because I do not think it is practical politics at the present day, and, therefore, it is not worth discussing. It may be that it has that theoretical right But what I do say is this. If the Government say

the States: "We, as Paramount Power, claim the right to prevent you manufacturing yourselves" it must be upon the condition that a reasonable supply of arms is available on purchase by the States I do not put it higher than that. That must be the principle It is only as showing the policy of the Government to-day in stopping manufacture that this case of Indore seems to me to be relevant to the question.

The next case is Patiala (page 1457). That is a different type of question in connection with arms It is that of licensing the purchase of arms and licensing the carriage of arms. In British India, the law, as I understand it, is that no one can carry arms without a British Indian licence I believe it is the opposite in most States—that no licence is needed for the carriage of arms Similarly, in British India, licences are required for the sale of arms and for the purchase of arms, as the case may be. Till a comparatively recent date, Patiala used to issue the licences themselves, and they were recognised by the British Authorities as sufficient (vide the instructions of the Commissioner of Ambala Divison, dated 30th August, 1858). There has been a change of policy, and now nothing but the British licence is sufficient Let me take an illustration of the inconvenience caused by that. When His Highness the Maharaja of Patiala goes to Delhi for the meeting of the Chamber of Princes and lives in his house there, he has some armed guards with him He has to write to the Political Agent beforehand and get licences in order to take his personal guards into Delhi Similarly, as regards Police going as police on duty into British Indian districts with the full consent, and it may be the request, of the British Indian Authorities, they cannot carry arms into British India without a licence The same thing applies to any State official going on a journey from one part of Patiala to another, crossing British territory. He cannot carry an arm with him without the licence of British India. It is submitted by the Standing Committee that there ought to be reciprocal arrangements between British India and the States on an agreed system; or that the State licence should be treated as equally effective with the British Indian licence itself. Reciprocity is obviously the right principle. The order to Patiala to stop issuing licences, or rather, the Order which brought to an end the effectiveness of Patiala licences, was made in 1882 (Parwana, issued on 7th October, 1882, by the Punjab Government), when there was a minority, and when there was no Ruler in a position to object.

Particular objections are raised—this is a different point—to rifles of what are called the prohibited bores of 450 and .303, even going to one of the Ruling Chiefs themselves, and there is trouble about that (vide letter No. 3631, dated 20th September, 1912, from the Political Agent to the Foreign Minister, Patiala) All these things impose unreasonable inconveniences upon the States; and it is really to a great extent not merely a question always of courtesy, but of practical difficulties that result, again matters for arrangement with the representative body of the Princes on sensible lines. I am not attacking the Regulations as regulations applied in British India I am only attacking the working of them as applied to the States in the way they are applied

Chairman: That would be a point most suitably taken up in India, would it not, by the Standing Committee?

Sir Leslie Scott: It bears upon the question of machinery for carrying on the working relations under Part 2 of your Reference It may not in itself be an economic or fiscal matter, but if you had the machinery for economic and fiscal matters that machinery, of course, should be able to deal with matters of this sort The licence has a fiscal side to it.

Chairman: Still, in the main, it is not one of your chief points in this Inquiry?

Sir Leslie Scott: No, it is illustrative of a particular aspect of what I call the practical inconvenience where one particular question of law is involved, or question of right or obligation, but it is a matter of neighbourly conduct between the British Government and States that the British Government professes to trust implicitly. I have picked out certain cases from this particular head as I thought that was sufficient

The next head is A (a) xv · " Restriction on the acquisition of immovable property in British India " That has a very decidedly fiscal aspect I am going first to take the case of Sirmoor (page 1509)

Chairman · This is a difficult question

Sir Leslie Scott The Sirmoor State owned various tea and other estates in the British districts of Dehra Dun and Almora These properties have been in the Durbar's possession for years, for example, the tea estate of Kowlagarh has been held for 65 years In 1903, a confidential circular, No 364, dated 19/8/1903 (Exhibit 1) was received from the Commissioner, Delhi Division, forwarding a copy of a vernacular Robkar issued in 1892 (dated 15th January, 1892, from the Agent to the Lieutenant-Governor, Punjab). This Robkar prohibited Indian States from acquiring immovable property in British India without the previous consent of the Government From the fact that the list of the five States (Malerkotla, Kalsia, Patodi, Loharoo and Dojana) to which it was sent does not include the name of Sirmoor, it may be presumed that the circular either did not, or was not intended to, apply to Sirmoor That is the same point that was raised by the Maharao of Cutch about the Extradition Notification in Bombay in 1873 But, in any case, in 1924, the Sirmoor Durbar applied (2nd June, 1924—no reference quoted—to the A G G , Punjab States) for formal permission to acquire some 10,000 acres in the Dehra Dun districts adjoining the Kowlagarh Tea Estates The proposed purchase included an estate then under auction The application was supported by the Agent to the Governor-General, but was refused by the U P Government (Telegram dated 20th June, 1924) I believe that it is the case in India, at public auction of real property, that the adjoining owners have the right of pre-emption at the top price

Chairman · In certain parts of India

Sir Leslie Scott I believe that was so in this part of India I am told so, but you may know much better

Chairman · It is so.

Sir Leslie Scott · This was an adjoining estate You see here is an estate owned by the State of Sirmoor as a jagir, I suppose in zemindari probably, but I do not know For purely business purposes

they wanted to acquire the neighbouring estate. I submit it is very hard that they should be forbidden to acquire it; and I do not know that there is any law of British India which disables a resident in British India from selling property to a particular purchaser. If there was, one could not complain, because it would be within the power of British India to legislate for persons within its jurisdiction; but if the only method of controlling the purchases by Princes is to control the purchaser and not the seller, then, in my submission, the executive action of the Government of British India is *ultra vires*. It must be a matter of legislation, and legislation directed to the persons within their jurisdiction. That questions of policy arise in connection with the acquisition of real property by the Princes in British India I can well conceive, and the Princes will, I am sure, recognise that questions may arise; but they deprecate very earnestly their being submitted to arbitrary rules, as they are. As you know, attempts were made to deal with this question in the discussions at Delhi and Simla between the Political Department and the Standing Committee, but I do not think I can usefully refer to those discussions

Chairman: The main argument, of course, is that in British India the Princes would not be exempt from the process of the Court if they purchased property.

Sir Leslie Scott: I appreciate that is the main point, and it is a perfectly reasonable thing to say. If you come to British India you must come, not as a Sovereign immune from process, but as an ordinary person residing in British India; and the Princes I think are willing to accept that position. In each of these cases that position is accepted. Once you get that out of the way, I venture respectfully to submit that the practice is left as a practice which is a survival from, I will not say prehistoric times, but from earlier times, and to-day requires very drastic reconsideration In this particular case there are some rather striking things I will just run on with it: The Durbar thereupon moved the Political Department of the Government of India in the matter. That Department's replies (No D/1222.P. dated 26th and 28th June, 1924, respectively) suggest that the decision was left to the U.P. Government who did not want to depart from their previous decision in this case, and to allow the acquisition of 10,000 acres by another State (the Raja of Jubbal) to be treated as *a precedent. A personal application to the Governor of the U.P.* (dated 8th August, 1924) received a sympathetic reply (dated 5th September, 1924) and a formal application was suggested to the Chief Secretary, United Provinces Government. This was made (No 43.C. dated 15th September, 1924) and received a reply (No. 1438.S. dated 6th October, 1924) that the Governor of the U.P did not feel himself justified in departing from a sound and well-recognized principle. This case is put up not so much to point out the arbitrariness by which the U.P. Government allowed one Ruler of a State to purchase land and refused another, but to show the unsatisfactoriness of the position. The point for consideration is whether the principle is consistent with recognised legal principle Apart from the fact that the Princes and Chiefs of India should not be treated worse than aliens (*vide* Section 17 of the British Nationality and Status of Aliens Act,

4 & 5 Geo V. C. 17) it is also a question which arises from the prohibition in this case, whether the Government of India are competent by administrative decrees or ordinances to place restriction upon the Common Law right of free and unrestrained alienation which every person owing allegiance to His Majesty enjoys within His Majesty's dominions As is pointed out in the case, a heavy loss was inflicted upon the owner of the property through losing the Sirmoor bid. That is that case.

Chairman: Would you be prepared to say that if they had the right of acquiring property in British India, inhabitants of British India should have the right to acquire property in Indian States?

Sir Leslie Scott: I do not know of any State which forbids that.

Chairman: In Kashmir it is not allowed, we were told about that. If you build a house you can have it for 20 years, and then it goes back to the State

Sir Leslie Scott. That is rather a different question. If you will forgive my saying so, I think that it rather a different point If there is a law in British India applicable to everybody, then the Rulers of the States cannot complain if it is applied to them If there is a law in Kashmir applicable to everybody, no person coming into the State can complain if it is applied to them I think that is the real point· it is that the Princes complain that they are singled out for invidious separate treatment different from the treatment meted out to everybody else.

Chairman: There seems to be a special law for the non-Kashmiri in Kashmir.

Sir Leslie Scott. There may be, but not any more applicable to British Indians than to Englishmen or Frenchmen or Japanese or subjects of any other State in India. I mean, for instance, a subject of Gwalior cannot go to Kashmir on the same terms as a Kashmiri There are many countries which have special rules as to real property which differentiate between nationals and aliens. I venture very respectfully to say that your question really raises that topic

Chairman: Very well

Sir Leslie Scott· His Highness of Cutch says that he would like to add a word upon that.

Chairman· Certainly

H H The Maharao of Cutch In regard to Sir Harcourt's question I was just going to say there is nothing in Cutch to prevent. we will say, a subject of Bombay purchasing property in Cutch

Chairman. A European as well as an Indian subject?

H H. The Maharao of Cutch· The question with regard to Europeans has not arisen, but there is no regulation prohibiting the purchasing of property by anybody, except another State There are rules whereby one State is not permitted to purchase property in another State; I presume the obvious reason for that is to avoid complications; but there is nothing to prevent British subjects, whether they are European or Indian, from purchasing property. I am speaking, of course, of Cutch State, and I think the same is the rule elsewhere

Colonel Peel: You have the same rule in British India

Sir Leslie Scott: I do not think so.

Colonel Peel: Is not that the same? I mean the Durbar of another State is not allowed to purchase property in your State

Sir Leslie Scott: No, what His Highness of Cutch has just said is that there is a rule forbidding another State, as a State, purchasing property.

H.H. The Maharao of Cutch: Yes.

Sir Leslie Scott: But the rule in British India is that a person who happens to be Maharaja of a State cannot purchase property in his private capacity in British India

Colonel Peel: We had been dealing with Sirmoor; that was, I thought, a Durbar?

Sir Leslie Scott: Yes, I think that was; that was in the case of Sirmoor; but the rule that I was discussing with the Chairman of the Committee just now is the rule which forbids the individual Ruler from acquiring property; and I think that rule is extended to some extent to the relations of the individual Ruler in his personal capacity

Colonel Peel: Yes; I was only making the comment that the case which has been cited just now, Cutch, is really the same as this case of Sirmoor of which you are, I do not say unjustly, complaining.

Sir Leslie Scott: I am reminded that it is actually against the law of British India to distinguish between purchasers: that that was decided by the Privy Council in the *Mayor of Lyons* case.

Chairman. Under the Land Alienation Act you can only alienate agricultural land in the Punjab to agriculturists

Sir Leslie Scott: Quite; that may well be I forget the reference to the *Mayor of Lyons* case at the moment; I remember looking at the case. The decision in that case is that it is contrary to the law of British India to restrict sales in that way. Of course, as I admitted quite frankly at the start, there are questions of policy raised by it, but they are essentially questions which can be settled by agreement

Chairman: Yes, I quite see your point

Sir Leslie Scott: The case of Porbandar (page 1501) is a fiscal case, or at least an economic case. Porbandar lent five lakhs on the 3rd May, 1922, to Messrs Rastoor Bhai and Oma-Bhai of Ahmedabad. It lent those 5 lakhs on the security of certain properties in Ahmedabad; the borrowers made default and offered to transfer the properties in part payment The offer was accepted; the sale was effected and the sale deed presented for registration The Sub-Registrar refused to register it and reported it to the Government of Bombay who asked for a detailed report. On the 27th of May, 1926, the Secretary to the Agent to the Governor-General informed the Porbandar Durbar (No. P.53) that the Bombay Government regretted that they were "unable to give permission for the transaction" It was also suggested that the object in view could be achieved if the property was disposed of by the borrowers and the proceeds handed over to the State—it may

have been a very inauspicious time for selling, you cannot tell—further, it was pointed out that it was always open to the Porbandar Durbar to obtain a decree in the Civil Courts against the debtors. That was a useful suggestion · you are a secured creditor; but really that is not a matter to worry about, because you can act as an unsecured creditor. In answer to this, a strong representation (No 33, dated 3rd August, 1926) was made by the Porbandar State on the ground that the refusal to register the document exposed the State to serious loss and that the measures suggested by the Bombay Government would not serve the end in view You note particularly the reasons (1) That if either of the suggestions of the Bombay Government were adopted, the properties would have to be sold at any price, however low it might be, and the creditors would have to rest content with the actual realisation, however poor (2) That the object of the Government of India Resolution (No 931A, dated 2nd February, 1923) was mainly to safeguard the status and dignity of the Ruling Princes, it did not contemplate that the Princes should not enjoy a right which even the most ordinary citizen was entitled to claim. (3) That the Government of India Resolution is not applicable as the property is neither in any of the Presidency towns nor in any hill station referred to in paragraph 1 of the Resolution, nor is it covered by paragraph 2 of the Resolution which deals with the acquisition of residential properties (4) That the provisions of the Registration Act do not justify the Bombay Government's refusal to register the document The Act lays down in very clear terms when and under what circumstances registration of a document can be refused. If these circumstances do not exist, as they certainly do not in this case, the document has to be registered.

On the 25th January, 1927 (No P 53), the Secretary to the Agent to the Governor-General communicated to the Porbandar Durbar the decision of the Government of Bombay, that in view of the circumstances explained in the representation of the Porbandar State the Government of Bombay have decided to revise their previous orders and to permit the Maharaja Rana Saheb to acquire the property in question This permission was subject to several conditions, one of which was that the property must be sold within five years These conditions were attached in spite of the fact that the property acquired was (*a*) neither in the towns or hills stations barred by Government Resolution, (*b*) nor was it acquired for residential purposes The Porbandar State contends: That the previous consent of the States was not obtained by the Government of India to the provisions embodied in paragraph II of the Resolution and that therefore these provisions are not binding on the States (2) That paragraph II of the Resolution is not applicable to the acquisition of immovable properties for non-residential purposes That, of course, Sir, again is a very serious case of actual loss

Then the third is Rewa (page 1507) In 1927 the Durbar were approached by the Board of Revenue, Bengal, with a request for a loan of Rs 25,00,000 (twenty-five lakhs) to an estate in Bengal under the Court of Wards A simple mortgage of the estate was part of the security offered It was pointed out that, in the last resort, it might be necessary for the Durbar to apply for execution, and, in the ordinary course of events, to buy the estate in order to safeguard their own

interests There was in this case no desire on the part of the Durbar to acquire an estate in Bengal, but the contingency was one which could not be disregarded. The case was therefore referred to the Government of India, and in reply (No. 970/26-28, dated 2nd March, 1928, from the Political Agent, Baghelkhand) the Durbar were informed that the proposal was sanctioned on the understanding that if the Durbar obtained possession by a suit for foreclosure, " the Maharaja will undertake to sell the properties within a reasonable time *to be fixed by the Government of Bengal.*" I do not know what a banker would say to that kind of manner of dealing with securities

Colonel Peel: A banker would not have gone into the transaction so light-heartedly, I think He would have got his security first.

Sir Leslie Scott: The Government of Bengal were not so likely to come to the Bank with that security. Here you have the Government of Bengal asking for this loan, offering the security, and then they say: " Of course, you cannot have the security on the same terms that an ordinary bank would have it, or any other lender; you must have it with a risk that we may force a sale "

Colonel Peel: Yes, but you must do justice to the Bengal Government and say they told them the conditions beforehand

Sir Leslie Scott: On being asked about it.

Colonel Peel: Yes, on being asked; as soon as they knew themselves.

Sir Leslie Scott: At any rate, there is the fact. I have chosen those two cases because there is no personal aspect about them, they are simply ordinary business transactions; and the big point is, that you want to do everything possible in India to encourage development. If the States have got money to invest they ought to be encouraged to invest it.

Colonel Peel: The big point is, if the Government of India has the power to make the regulation in question.

Sir Leslie Scott: That is the legal point and the big point from that point of view, but the practical point is that it is desirable to remove impediments in the way of free development of property in India. The Princes' money is wanted to fructify

Colonel Peel: It is wanted in their own States, is it not?

Sir Leslie Scott: Both. If all we have asked for before the Indian States Committee is recommended by the Indian States Committee, development of the States will follow very rapidly.

There is a personal case of the Maharao of Cutch under this same heading, where he was allowed to buy a house in Bombay which contained one or two cottages in the grounds, and having bought it he was told that he would not be allowed to let these cottages to anybody, but he could sell them (No. 1047, dated 5th September, 1917, from the Political Agent) Perhaps His Highness the Maharao would explain to you his views as to the reasonableness of that.

Chairman: We shall be very glad to hear His Highness, if he wishes to address us on the point.

H.H. The Maharao of Cutch: There is nothing special to add to what Sir Leslie has said except that we were told that we were not to rent any portion of the property.

Sir Leslie Scott: That will be sufficient, Sir, for my purpose.

H.H. The Maharao of Cutch: It was not a case of non-residential property; it was a house that was purchased for my own residential purposes

Sir Leslie Scott· The next head is A (a) xvi, which is very short (page 1515). This is: "Restrictions upon Borrowing." Of course, the broad point, as you know, Sir, about borrowing is that the resort of the States to the ordinary facilities of the money market is hedged about with restrictions by the Government of India They are not really free to borrow. It may be that, as a good *paterfamilias* of the States of India, the Crown might guide some of them in the use of any borrowing powers, but the point that the Standing Committee desire to make is, that it is no part of the relationship between them and the Crown that that control should be exercised as a matter of compulsion and without their consent. It is obvious that, from a certain point of view, the States can be regarded as local authorities are regarded financially in this country. The borrowings of the local authorities of this country affect the terms upon which the State itself can borrow It is true of the States of Australia, in that case I think actual legislation has been necessitated because the effect upon the National credit of local borrowing may be prejudicial in certain events. Those considerations obviously arise as regards India, they apply equally to borrowing by the Provincial Governments All these matters are matters for joint consideration. What the Princes say is: "We are perfectly willing to enter into joint consideration "of these matters but we deny altogether your right to give us orders "about them." That is the position they respectfully take up and, coupled with it, the offer to enter into reasonable arrangements.

Colonel Peel· The difficulty I feel about that is, that if you have consultation, unless someone has the power of deciding, it is not much good to have consultation

Sir Leslie Scott I agree, Sir That is an absolutely true observation, if I may say so with respect When I said consultation, I did not mean general round table conferences on every occasion, but a consultation as to what would be an efficient system for regulating the matter I do not want to go into that at this stage, but they say definitely that they are willing to consider any proposals on that subject

Now, in this particular case Patiala borrowed, not on the market but from the Bank of Bombay, a comparatively small sum of money, nearly 22 lakhs, and the Punjab Government (No 277 dated 5th June, 1891) at once wanted to know why it did it and what it wanted it for, to what purpose was the sum to be devoted What right had the Government to do that? It may have been conceived in a spirit of the kindliest desire to assist, but the point raised by Patiala is that there was no right to interfere.

Colonel Peel: They object to the rule

Sir Leslie Scott: Yes

Colonel Peel: It is not a question of this particular case.

Sir Leslie Scott: No, not this particular case.

Colonel Peel: It is only that they object to the rule They say that there ought to be free borrowing without such restriction

Sir Leslie Scott: They say "That is our legal right." They say also on this, as on a great many other subjects, "We recognise that "the States are inside India and that we are neighbours, we have "got to live side by side in a financial, as well as in any other, sense "and that consequently it may be necessary to have a common policy "in these matters and to regulate these matters in some such way." It is the essence of all civilisation that we should submit to regulation of some sort and the States say that, by their own free will, they are willing to consider any proposals that are made on this, and a great many other subjects—not on this more than other subjects, but on this as well as on a great many other subjects That is the line they take up.

A (*a*) xvii is an important heading because it is a rather general heading. It is "Other Interferences in Internal Administration." I will take one, Baoni first of all (page 1519). I do not think I need go into the facts in detail, Sir The point of it is, that it illustrates what the States say is the danger to their effective government of Political Officers intervening and supporting servants of the Darbar against the Darbar. It leads to want of discipline. I do not think I need go into it in detail but it is a good illustration of that sort.

Bhopal (page 1526). There are three different points here; I may just give you the points The first is the Paramountcy claim that the right of Bhopal to non-interference by the Government of India was conceded to the State on an understanding that it would administer the State well. The second is that a kharita to the Viceroy complaining of various matters, *inter alia*, of a letter to the Viceroy having been stopped by a Political Officer, is stopped and not sent on to the Viceroy. The third point is a complaint against the appointment of what was called a reporter to attend the Court of the Begum Sahiba and report regularly to the Political Agent as to everything that was going on Those are the three points. They are old, but they are none the less relevant because they initiate certain lines of policy towards the Bhopal State. The first one appears quite shortly on page 1533 This is a letter from Sir Lepel Griffin to Her Highness (dated 12th August, 1885) and if it were more reasonably condensed I should have called attention to the tone of those letters but I do not think it matters, having regard to the fact that it is 40 years ago; it does not matter now. The second paragraph says this, "You often refer to the rights and prerogatives of the State under the treaty. The British Government, you say, is not entitled to interfere in State affairs. But the Government made this concession on the understanding that (1) the Bhopal subjects would be ruled with justice, consideration and mercy; that (2) the ryots would not be obliged to leave their villages and go to foreign territories owing to excessive and unjust land assessment; that (3) civil cases would be tried with justice and equity; that (4) the decrees would be executed lawfully; that (5) the prisoners would not be unlawfully accused and convicted but pro-

perly tried in open courts; and that (6) secret organisation would not be encouraged which, in obedience to the orders of high personages, imprison and ruin innocent people." For the A.G G. to put forward a claim of that kind that the right of the State to be free from Government interference inside the State was only obtained as a bargain in concession for an undertaking on all these six heads was a monstrous travesty of anything which existed in the Treaties There is nothing of the kind in the Treaties, as you know, Sir That, coming from the A.G.G. addressed to Her Highness, is a thing that ought not to be and does permanent injury to the relations, because it remains on the record for subsequent officers of the Department to read and to follow. There is an answer from Her Highness complaining of various matters, and she draws attention to the two matters that I mentioned to you, and I will just read three paragraphs of her letter. It was not an answer to the A.G G., but a complaint to His Excellency the Viceroy. This was to the Viceroy (dated 1st April, 1886). I am only to ask you to look at three paragraphs beginning with paragraph 7; "I have also received through the Foreign Secretary Your Excellency's orders upon the subject of the Wazeer Your Excellency approves of my proposal to appoint a European as my Wazeer, in place of Nawab Abdul Latif, who was appointed as a temporary measure at Sir Lepel Griffin's suggestion I am now engaged in finding a suitable officer, and when I have selected him I will communicate his name to Your Excellency I propose to delegate to the Wazeer, so appointed, a general control over all the departments of the State, but of course, he must exercise his authority in due subordination to me, the head of the State The powers which, at Sir Lepel Griffin's suggestion, have been conferred on Nawab Abdul Latif, have virtually reduced me to a cypher, and I have now no authority in the State. 8 There is only one further matter upon which I venture to trouble Your Excellency, as it gives me great annoyance The Agent to the Governor-General has appointed the editor of a newspaper, one Mirza Sharif Hassain, to attend my Darbar, and to report the proceedings to the Resident, and I have to provide this gentleman with a house and horses All the ministers and Raises of this State are ordered to hold intercourse with Mirza Sharif, and he has been authorised to enter my court without my permission, and without even sending me notice when he desires to attend He now attends regularly at my court when I am transacting private or public business with my Ministers, and then sends such report of the proceedings as he may think proper to the Resident Such an appointment is, I need not point out to Your Excellency, an invasion on the privacy of my court, and altogether opposed to the customs of my State. and I would ask Your Excellency to disallow the appointment. 9 There is one further matter which I have omitted to explain to Your Excellency On the 17th November last I received a communication from Your Excellency, regarding my affairs, and I am afraid Your Excellency must think that I was wanting in respect in not having acknowledged it. But I did reply to Your Excellency's gracious communication on the 23rd November, and the letter was forwarded in the usual course through the Resident in Bhopal. Unfortunately the Resident disapproved of the tone of the letter and after certain communications with my Vakil, the letter was with-

drawn and returned to me. I mention this circumstance in order that Your Excellency may not think that I have in any way treated Your Excellency's communications with discourtesy." That is a complaint to His Excellency the Viceroy, couched, I submit, in entirely proper terms, and under Exhibit 13 you get a letter from Sir Lepel Griffin to Her Highness (dated 19th April, 1886), "I am in receipt of a Kharita through the Political Agent in Bhopal, sent by you, for being forwarded to His Excellency the Viceroy, and as it appears to contain expressions that are not proper and are contrary to His Excellency's orders, I return the said Kharita for your reconsideration, and suggest as an advice one or two alterations in very important matters," and then he goes through a long argumentative letter, and at the end, in regard to the question of the Reporter he says: "As regards Mirza Hussain Sharif"—who had been appointed by Sir Lepel Griffin as a Reporter—"I have only to say that he has applied for leave for going to England and I have not yet decided whether anybody is to be appointed in his place or not. I am very sorry the Mirza was in any way disagreeable to you, but I must remind you that other full powered Chiefs like Bahawalpore, Patiala and Kashmir have reporters at their courts, and the Government of India will not allow you to dispute the right of gaining information in a lawful and unobjectionable manner." I do not know whether you will allow me to ask the Maharaja of Kashmir whether he had ever heard of a Reporter at the Court of Kashmir.

H.H. The Maharaja of Kashmir: I have never heard of a Reporter in the Court of Kashmir. There was a State Vakil; he was kept at the Court for the convenience of the Residency, but he was not a Reporter, and I have never heard of a Reporter; but that does not mean that people did not report.

Sir Leslie Scott: That is the Bhopal case I am not to go into it in any further detail. Those documents remain upon the records of the Agency; they are bound to be very misleading to officers of the Department coming there to-day.

The next case, Sir, is Bikaner (page 1553) The present Ruler of the State (His Highness Maharaja Ganga Singh) was "invested with full ruling powers in December, 1898." That is a quotation from Aitchison (Vol. III, page 341). This statement is not borne out by facts The full ruling powers with which His Highness is alleged to have been entrusted were subject to definite and rigid qualifications which were set down in the Political Agent's letter to His Highness, dated 10th November, 1898 (Exhibit 7): "My dear Maharaja, I am directed to inform you that the Government of India have decided that Your Highness may now be entrusted with the management of your State, subject to certain limitations to be imposed for a time at least These limitations are:—(i) That no measures or acts taken or done by the Council or Regency during the minority may be altered or revised without the concurrence of the Political Officer, accredited to the State (ii) That the Political Officer's approval must be obtained before any important change is introduced in the administration. (iii) That His Highness the **Maharaja** [illegible] not act against the Political Officer's advice in any [illegible] I to ask you to send me a formal acceptance [illegible] tions. I am sure you will recognise the [illegible]

been shown in framing them." Sir, I want to make two comments on that letter. The first is to submit that the Government had no right to impose any single one of those limitations; that when the Maharaja came of age he was entitled to the full powers of the State, without any qualification at all; and that there was no power vested in the Paramount Power to withhold any of them. The second comment I want to make is that to ask a young man on coming to full powers, in general to have full powers, to consent to an unlawful limitation like that was wrong. It was putting upon him a pressure that cannot be justified Whether he wrote back and accepted I do do not know: I assume that he did Hardly any young man would have the courage to refuse He passes from his tutor's leading strings, so to speak, and the next morning he is asked to sign away his birthright for an undefined period of time Wrong!

Colonel Peel: If I may say so, it does not seem to have affected the Maharaja of Bikaner in his administration

Sir Leslie Scott: Some people have such strength of character that they can survive almost anything These limitations were maintained for eight years No attempt was made by the Government to remove them of their own accord It was only after pressure from the Maharaja that it was done. Would you look at the next letter (Exhibit 8), a letter from the Maharaja? (No D O 11, dated 19th January, 1907, to A.G.G., Rajputana) "As you are aware, when I got my powers on the 16th December, 1898, the Government of India imposed certain restrictions For your convenience I enclose copies of a D.O letter dated 19th November, 1898, on the subject from Colonel H A Vincent, the Resident at Bikaner, to my address and of my reply to the same. Though in Colonel Vincent's letter the exact period for the continuation of these restrictions is not laid down, I was led to believe from my conversations with Colonel Vincent and other officers that they were generally for a period of some two years or so."—If that is true, that is very important—"In 1903, at my request, Major C F Minchin, D S O, the then Political Agent of Bikaner, had recommended the removal of these restrictions, of which he informed me in his letter dated 11th October, 1903 As, however, I have not yet been favoured with an intimation of the result of the same, I am now troubling you in the hope that this matter may receive your favourable consideration, and I have every confidence that you will be so kind as to make a recommendation on my behalf to the Government of India for their early removal now" On the 6th of May, 1907, Mr Stewart writes in reply (No 11 P) "With reference to your confidential letter dated the 19th January, 1907, I am directed to inform you that the restrictions hitherto imposed on the ruling powers of Your Highness are now, under the orders of the Government of India, unconditionally withdrawn" That is the record of the restrictions that were imposed Just before their removal, you might look at the last paragraph of Exhibit 15, a letter to the Maharaja (No 15 P, dated 11th August, 1906, from the Political Agent). "The Government of India add that they attach importance to the principle that the Political Agent should be kept fully informed of the measures upon which Your Highness is engaged, and they note that the Agent to the Governor-General has drawn your

attention to this." So that it is quite plain that those conditions were being rigorously enforced eight years after the end of the minority.

I will deal next with one or two matters that occurred while he was still under these limitations. Will you turn to Exhibit 16. There are two letters there (I will read them both), from the Resident or Political Agent (dated 13th and 14th December, 1899, respectively—no reference quoted): "I have been inundated lately with petitions from various relatives of Lekh Ram, Police Jemadar of Chattargarh, who was convicted under Section 330, I.P.C., and got one year's imprisonment and fine of Rs 50 I understand that this case has been settled by the Judge of the Appeal Court, and that he has not appealed to the Council as he ought to do, and I have taken no notice of his petitions beyond telling him to appeal to the proper court. Still, as I have heard so much about the case, I should like, if you do not object, to see the file, which is presumably in the Appellate Court. Would you allow them to send it to me?" The next letter is: "I enclose a Petition received from one Mool Chand Mali, now in the gaol, who seems to think that he owes his sentence especially to your kind attention I suppose he was a defaulting Public Works man? Would you mind having the case looked up and a short note made telling me what his case is about? There is no hurry. Please let me have the Petition back" A single instance of that kind is nothing; but the habit of receiving petitions from subjects and others in the State and writing to the Maharaja about it, however privately it is done, is a breach of the rule that the Government has not right to interfere. In this case, as we know, there were restrictions at this time. It may be that, consequently, the Agent was entitled to make these overtures or these requests to the Maharaja, but it illustrates the harm done to the authority of the Maharaja, in exactly the same way as if no restrictions had been imposed This is what the Maharaja writes back (dated 18th December, 1899—no reference quoted): "I am having the note about Mool Chand's case prepared, and when ready will send it with the Petition. Also the case of Lekh Ram No, I do not personally mind at all your asking about these people's cases when they petition you, as there is nothing to hide; but I must say it is quite new to me, and I am not accustomed to it Since I got my powers in December, 1898, and till Colonel Vincent went away on 1st August last, I do not think there was a single occasion in which Colonel Vincent sent the man's petition to us for report. He sent them for disposal only You can look this up in your office records, and he hardly ever asked me about any case either. He often told me that he had confidence in me, and did not want to hear anything about such cases, and that he wanted to leave me alone." I will not read the details, but in paragraph 3 you will see this: "My whole meaning is this, that the low class of servants in this State—the majority of them at any rate—are the very worst type you can find anywhere, and if on getting petitions from any of them you always ask for notes, etc., it would of course be an awful bother. Hardly a day goes past when I don't hear of some Police (or other Department) villainy: and if you ask in each case, the people who petition do get to know of it through your clerks or mine, and it puts their backs up, and even if you don't interfere, it in a way upsets my authority. I mean they know I cannot do anything very much myself without your asking for an explanation.

That is the gist of my whole letter." You see that is an illustration of a particular Political Officer putting forward a completely erroneous view of the duties of a Political Agent. In his reply, dated 19th December, 1899 (no reference quoted), he crosses the t's and dots the i's and says It is the Government of India and not the Political Officer. "It is, I assure you, no uncommon thing to call for information in respect of complaints from subjects of Native States from the biggest Durbars in India, and where Chiefs have held their powers for years When I was in the Foreign Office, I have seen and signed plenty of letters asking A.G.G.'s and Residents to procure such reports." This is the very thing that the Princes are all complaining of. This is signed by Captain or Major Bayley. That is that.

Then there is another type of question involved in this case of His Highness of Bikaner (page 1566). In a perfectly ordinary way the Maharaja sent this Captain Bayley a shooting licence, for which he did not ask him to pay, as the Captain was going out where he would get some shooting, and added: "Would he please not shoot many black buck." This gentleman, Captain Bayley, turns round in a great state of mind and temper and writes a sarcastic letter back (dated 29th January, 1900—no reference quoted) "I was very much amused at your sending me a shooting licence. I will have it framed, I think, and show it to my cousin and others as a specimen of the advanced state of Bikaner, where not even the P.A may shoot without a licence. Perhaps you will give Major Robinson one, too also the A G G and his Staff?" It is the wrong tone. Then he writes a long rigmarole of a letter (dated 6th February, 1900—no reference quoted) that I will not read.

At one time in the State of Bikaner there were some camel sowars kept available for the Agency for certain purposes Then they became unnecessary and they were abolished A new Agent came and (Exhibit 29) on the 20th December, 1906, he writes to the Maharaja (No. D O 106) "I shall feel obliged if you will kindly direct the camel sowar on duty at the Agency to be present as usual" He did not get an answer at once, so he writes another letter (D O No 1, dated 4th January, 1907) "Kindly refer to my demi-official letter No 106, dated the 20th December, 1906 I should feel obliged if you will be good enough to have the camel sowar referred to sent as early as possible, with some explanation of the matter" The explanation was sent (No D O 5, dated 28th January, 1907), and he was told that the camel sowars had been abolished for some time before, and he accepted the explanation (D O No 12, dated 30th January, 1907), but it is difficult to understand that sort of thing Having accepted the information, he says at the end of his letter "It is fortunate in the circumstances that your explanation has arrived in time to render it unnecessary for me to take any further steps in the matter" It is intolerable

Then, coming to the State of Cutch (page 1571), may I just very shortly tell you the facts there? A mare belonging to a Postal overseer was loose and did damage in some fields or on some land in the village. The mare was arrested by the appropriate official and the Kotadi of the villagers assessed the damage at 7½ Kories, and the man had to pay it. The Postal Service raised a tremendous bother about it, and

there were complaints, although the matter was dealt with in accordance with the ordinary, elementary, judicial procedure of the State. The Superintendent of the Post Office took it up and wrote a strong letter (No. 11, dated 3rd April, 1913, to the Political Agent), which is Exhibit 1. It is the letters which are of importance, not what the mare did He reports that the mare had broken loose, and he says that, on inquiry, the owner found that the animal was in the custody of a local resident, who had beaten it severely. "He thereupon went to the Manager Kotadi, who also performs the duties of a police patel, as stated by the Overseer, reported the matter to him, and requested him to arrange to have his horse returned to him The Manager then got the horse released and handed over to the owner. About four days afterwards the Manager sent for the Overseer and asked him to pay 7½ kories, saying that the horse had done some damage in the field of the gentleman named above. The Overseer protested and said that at that time of the season there were hardly any crops in the field, and even if there were his animal could not possibly have damaged the crops to the value of 7½ kories, within the space of about two hours that it was out. The Manager told him that he could fix the penalty at any amount he liked, and the Overseer was bound to pay. As the Overseer saw that it was useless to reason with the Manager, he paid 7½ kories and demanded a receipt, but the Manager plainly refused to give it The Overseer has complained to me of the Manager's high-handed action, and at the same time assures me that the Jowari which had been sown in the field and alleged to have been damaged had already been reaped and the stalks left would hardly be worth much. The penalty taken by the Manager would, therefore, appear to be exorbitant, and his not granting a receipt quite irregular." Then he asked the Political Agent to move the Durbar to get the money refunded. The Agent (No 440, dated 5th April, 1913) sends it on with a request for favour of inquiry and report. The Dewan of Cutch replies (No. 270, dated 21st April, 1913), that the man's statement that the mare had broken loose was false, that the animal was always let loose, and complaints were received, but everything was done in due form by an independent inquiry of people who saw the damage. Then (Exhibit 7) the Political Agent writes a letter (No. 752, dated 16th July, 1914), which I venture respectfully to criticise. Paragraph 2 is: "From the papers of Inquiry made by the Inspector of Post Offices (copies forwarded to you with my No 880, dated July 13th, 1913) it appears that the mare was in Kotadi for the one day only. Of course more reliance should be placed on the inquiry made by a Government servant of the position of an Inspector of Post Offices than that of an interested party like the Manager of Kotadi." The Manager of Kotadi was an official of the Durbar having no interest in the matter and having taken no part except referring it to the Panchayat of the villagers That is reported by the Dewan of Cutch in a very reasonable courteous letter in answer (No. 457, dated 3rd August, 1915) Of course, these things in themselves are small: they are merely given as illustrations; but obviously if they are multiplied they become intolerable

Then the next case is on page 1577. There was a British Indian who held some property in lands in the Cutch State. On his death his son, also living in British India, applied to the Durbar for the recovery of certain dues and the restoration of lands from the agent who was

managing the property during his father's time. The Dewan replied (No. 283, dated 17th July, 1914) that he must enforce his claim through a court of law and "that no action can be taken on his petitions like the present one." Thereupon Hemandas complained to the Political Agent against the Durbar's inaction and requested that enquiries may be made from His Highness "as to what was done of immovable and movable property of my deceased father which he had in Gottel Naro" The Political Agent (No. 1381, dated 8th November, 1914) forwarded the application to the Dewan "for favour of enquiry and report." Cutch's comment on that is that it cannot be followed how the Political Agent considered himself invested with such authority as could entitle him to order the Durbar to enquire and report. The Dewan replied (No. 419, dated 7th July, 1915) "that the petitioner has been informed more than once that any redress he wishes to seek should be sought through proper Durbar courts, and as the application concerns the internal affairs of the State it is hoped a suitable reply to the petitioner will be given in the matter" The Political Agent replied (No 884, dated 9th July, 1915) that "there is no question here of Agency interference in internal administration of the State" Well, what was it?

The next case is this A peon of the Agency Office, Cutch, complained to the Political Agent that the Durbar police searched his house without any reason and on his remonstrance gave him a thorough beating He also said· "I am a Government servant, therefore hope you will be good enough to take necessary action in the matter" The Political Agent (No V 1111, dated 1913) again assumed the role of authority and forwarded the application to the Dewan for enquiry and report The Dewan replied (No. 631, dated 13th September, 1913) that the petitioner resided in Durbar territory and cultivated Durbar land There were complaints that he harboured bad characters and was several times warned That produced no effect on him and after the report of a theft on a certain night a search was made and a notorious convict with four previous convictions was found hiding in his house Beyond this the report of beating was incorrect The Dewan also suggested that "if the petitioner had anything to complain against the action of the police he ought to do it before the Police Commissioner, or to file a complaint before a Magistrate for redress of his grievances." The Political Agent in reply (No 1226, dated 30th September, 1913) pointed out "that the petitioner, Peddu Jussab, is a Government servant and if there be any complaint against him this office should be consulted before any steps are taken in the matter of Government servants" It cannot be comprehended why the Durbar are to be deprived of their territorial jurisdiction over their own subjects simply because they happen to be in the employ of the British Government, more so when the offence committed by such subjects may be unconnected with their official duties I will not trouble to read the letters, because that summary covers the whole case That is Cutch

There is only one more that I want to refer to under this head That is Jaora (page 1611) It is very short The incident occurred in connection with the minority administration of the guaranteed estate of Khojankhera, whose management had been taken up by the Durbar.

In the course of correspondence relating to this estate the Political Agent in Malwa addressed the following letter (No. 359, dated 17th February, 1908) to the Minister of Jaora which is here reproduced in full: "I have the honour to address you regarding the guaranteed estate of Khojankhera, and with special reference to your letter No 212, dated the 13th April, 1907, and to my letter No 4655, dated 23rd June, 1907. At page 411 of Aitchison's Treaties, Vol. IV, in Sanad CCV, it may be seen that the villages of this Estate, which are guaranteed by the Government of India, are Bahadurpur, Khojankhera and Erniagujar. I find, however, that at the present time the Estate is only in possession of half Bahadurpur, and that Erniagujar is no longer included in the guaranteed, Estate. On inquiring from the Tehsildar of Jaora, who is said to be in charge of the Estate, I learned from him that the Durbar appropriated Erniagujar many years ago, and has at a comparatively recent date appropriated half Bahadurpur. I shall be glad to know at a very early date why Erniagujar, and half Bahadurpur, are not now included in the Estate of Khojankhera, when each was appropriated by the Durbar, in what circumstance, for what reasons, and by whose authority. At the same time I shall be glad to know what quit-rent the Durbar has been taking from Khojankhera since each of these villages was taken from the guaranteed Estate." If the Government considered they were guaranteed villages, those were legitimate questions. Then it goes on: "Pending a reply to this letter I have instructed the Tehsildar not to pay to the Durbar any Tankha, debt or interest."

The comment, Sir, is this, without attempting to enter into the merits of the case: the Darbar's contention is that the Tehsildar of Jaora, being a servant of the Darbar, the Political Agent had no right to issue orders to him, especially when such orders were directly contrary to his duty as the State's Tehsildar. The proper procedure was to communicate with the Darbar and so to arrive at a decision in the matter.

That is all that I have under this head, but I want to call your attention to one sentence, quite irrelevant to this head, as we pass it (page 1617), in a letter (No. 2288 dated 12th March, 1909, to the Foreign Minister, Patiala) signed by Sir John Thompson: "A large number of men from the Patiala State are enlisted in the Indian Army." It is only that. I would ask you to bear it in mind, Sir, in connection with those cases about jurisdiction over men in military units stationed inside the States You will remember when I was dealing with those cases under heading A (a) ii b, I pointed out that if great difficulties were made for the States in questions of jurisdiction, it would tend to interfere with recruiting, and therefore I wanted this statement by Government that large numbers of recruits from the States come into the Army to be borne in mind as a very important thing.

Then I come to A (a) xix—"Disregard of Agreements and Declarations of Intention." (If the Committee ask me what A (a) xviii is, my answer is that I do not know and that I never have been able to find out. I believe it to be entirely due to an accident.) This is a very important subject, though I hope to be able to deal with it fairly shortly, because so much depends in regard to the maintenance of really cordial and trustful relations upon the scrupulous carrying out

of agreements and even declarations of intention. It is obvious that for practical purposes, however important fundamental legal principles may be, as on an enquiry like this, to ascertain the basic position, in daily practice the relations between the States and the Government cannot be carried on as a series of legal discussions raising questions of law. For practical purposes everything depends upon the personal trust and confidence, which in their turn depend upon the scrupulous observance of promises of any kind, whether they are in a legal sense binding promises or whether they are not. Unfortunately it is the case that many agreements are ignored and broken, and so are declarations of intention These are illustrations I use the most neutral language I can think of.

These are declarations of what is going to be done Will you look first at Bhopal (page 1631). In 1924 Bhopal wrote to the Political Agent (No 1637 dated 22nd July, 1924) that the Durbar proposed in two months' time to commence levying customs duty on all articles imported except goods intended for railway purposes which were exempted by the agreement of 1880, and also goods while in transit which would not be taxed. The Political Agent (No 1602 dated 20th May, 1927) agreed that the Durbar was entitled to levy these duties, and he expressed that view. Ever since then first one difficulty and then another has been raised, so that the Durbar have not yet been able to achieve their object.

The point is that, under the Treaties of Bhopal and under the Railway Agreement, they were authorised—in the former impliedly, and in the latter specifically authorised—to impose a tax of the kind, the Political Agent expressed his view that there was no objection, and yet all kinds of difficulties have been raised which have prevented it, and the State feels that these difficulties are not real difficulties in the sense of being insuperable difficulties, that they could quite easily have been got over had it been desired. I need not read much of it. I must look at one or two letters I think I can go straight to Exhibit F, letter from the Political Agent (No 1602 dated 20th May, 1927) Paragraph 2 "The Agent of the Great Indian Peninsula Railway has informed me that he has no objection to the State levying its customs duties in respect of articles imported into or exported from Railway limits in the Bhopal State by Railway employees for their personal and private use. 3 In my opinion the Durbar are entitled to levy these duties, and, when one or two minor considerations have been cleared up, I propose to give the Railway authorities one month's notice so that the employees should know where they stand 4 My predecessor asked you, I find, kindly to say what procedure you contemplated for giving effect to the proposal. The object of his query was to come to some agreement as to how transgressions against the Customs Regulations should be dealt with You have proposed that the arrangement obtaining with respect to Sehore Cantonment should be followed in the case of Railway areas This, however, is not altogether practicable In the case of Sehore it has been in effect agreed that the inhabitants of the Cantonment be considered as being Bhopal State subjects. We have then a simple means of dealing with such transgressions in the Cantonment But Railway servants are subjects of British India, and so cannot be treated in a similar fashion" I cannot understand his logic It is agreed to treat certain persons in the Cantonment, who are subjects of British India, as State subjects'

and the remedy is simple; the same state of affairs exists in the Railway and they cannot do it. He goes on: "*If, therefore, the Durbar* will agree, where causes of complaints arise, to prosecute Railway servants in the Courts of Railway Magistrates concerned, there will be no difficulty." There he is suggesting that the Customs people should come in as prosecutors on every occasion in the Railway Courts, and this is the answer (No. 461.T.7/4/A dated 16th June, 1927), the third paragraph: "May I point out that the legal personality of every individual consists of a political and a civil status? For levying the State Customs Duty the determination of nationality—or, in other words, the Political status of the person concerned—is, I submit, wholly immaterial. All that we need look to really is the fact of his temporary or indefinite residence or domicile. If it is within our territorial limits, the authority competent to determine his Customs liabilities under the State laws is alone qualified to impose the due tax or fine as the case may be. The Railway area in this State is admittedly within our territorial limits and sovereign jurisdiction. The Magistracy there exercises its civil and criminal jurisdiction as ceded by the Bhopal Government Equally undeniably the State enjoys in that area its full Customs jurisdiction, short of the exemp*tion contained in Clause 6 of the Bhopal Railway Agreement of 1880,* and if to enforce the orders, or to realize the imposition in the shape of tax or cash penalty, the assistance of the Magistracy with competent jurisdiction is required, it should be afforded in pursuance of the provisions contained in Article 82 of the State Customs Act, a replica of Article 193 of the British India Sea Customs Act No. 8 of 1878. The arrangement suggested in your letter under reply would, in effect, amount to a cession of the Durbar Customs jurisdiction in the Railway area, which, I feel sure, is not desired Then there are practical difficulties in our adopting the procedure It is just possible that in the beginning there might be quite a number of cases of infraction, until the Railway employees have settled down to this new order of things, and it would be impossible for the Customs Department to undertake this unnecessary and, it may be, considerable litigation and cost, with the ever attendant risk of the Department failing in the end to substantiate the case against the delinquent person. Again, the portion, if any, of the receipts eventually saved after meeting the litigation charges, would hardly be commensurate with the trouble involved in its collection. I might also add that, as in the case of British India, the Railway Magistracy would not be enforcing these orders of the State Customs Court merely as a matter of courtesy, but as a necessary obligation to the State on whose cession of the civil and criminal jurisdiction, their exercise of these powers in the Railway area is inherently based." Then there is the answer, Sir, Exhibit I. (Letter No. 3140/13/13/21 dated 11th October, 1927.) He says, paragraph 3: "It is therefore necessary to look for an alternative and more regular method of assisting the Durbar in the recovery of their Customs dues"—I do not know what is meant by "more regular."—"A draft Convention was drawn up some years ago for the recovery of His Exalted Highness the Nizam's Customs duties within administered areas at Hyderabad, but, although it received the sanction of the Government of India, it has not actually been brought into force . . . . . . 4. This Convention, as has already been stated, has not actually been brought into force, but it is

understood that there is a reciprocal arrangement at Hyderabad between the British Government and the Nizam's Government by which Customs duty can be recovered on behalf of the Hyderabad Government from persons residing in Railway limits." A copy of Foreign and Political Department Notification No. 2601 I.B., dated 9th November, 1917, was enclosed. That was on the 11th October, 1927, over three years after the matter had been originally started. The thing speaks for itself, I will not say any more

The next case is Cutch (page 1638). As you know, Sirs, there are in the State of Cutch a number of Jhareja Chieftains distinctly related to the family of the Maharao, who himself is a Jhareja, and they have certain jurisdictional powers within the State, a particular kind of feudatory; their position was guaranteed by the British Government in the original Treaty with Cutch of 1819 (Aitchison, Vol. VII, page 20), and the result of that guarantee, quite naturally, has been that they have not been particularly easy to manage, feeling that they can snap their fingers—if His Highness will forgive me—to some extent at the State because they have got the guarantee of the British Government Very great tact has been required in handling them because they have not always been very reasonable I say nothing about the Jharejas of to-day, I am talking about past history and I hope that living persons will understand that I am not talking about them This led up to a proposal which can be taken quite shortly that there should be a special Court constituted in Cutch for dealing with cases in which the Jharejas were interested, and a special Agreement was made between Cutch and the Government of India about that Court in the year 1875 (*vide* Aitchison, Vol VII, page 39), you will find the relevant rule of that Agreement in Clause 2 That raises the question in this case "The members of the Jareja Court who shall be four in number, will be appointed by the Rao, they will be selected from among the members of the Bhayad"—that is, the relations of His Highness—"His Highness' Dewan or Deputy Dewan will also be appointed member and will be *ex-officio* President of the Court Three including the President shall form a quorum" It is perfectly clear there in terms that His Highness was to appoint the four ordinary members and that his own Dewan was to be the President, obviously appointed by him He appointed the first one It may be more than one; I do not know Several were appointed at different dates I understand from His Highness who is sitting by me But in 1910, the occupant then being a lent officer, the Government wrote to the Durbar to ask if they had selected another person to take his place On the 14th November the Durbar informed the Political Agent that they proposed to appoint a competent officer to the post later on, and in June, 1911, the Durbar again addressed the Political Agent on the subject, stating that they were going to appoint as President of the Jadeja Court one Harsukhram Panhitram Pandya who had passed the test of a High Court pleader and was also qualified in other ways On this, the Political Agent suggested in a letter to the Durbar that the proposed appointment should be deferred until the matter had been before the Government, as from the tenor of their letters they appeared to be considering that the post should be filled up by a Government Sub-judge and that the question of appointment of a State Official to the post was not so far in their mind On the

2nd March, 1911, the Political Agent informed the Durbar that he had received a reply from the Government who did not consent to the appointment of a State Official as President of the said Court and asked him to advise the Durbar to select a Sub-judge in the British service, and that in case of their finding *any difficulty in doing so the* Government would be glad to suggest the names of one or two Sub-judges for His Highness' consideration. The Durbar in reply dated 29th April, 1911, wrote, "These views are not only prejudicial to the inherent rights of the Ruler of this State as acknowledged in and guaranteed to him by the treaties with British Government, but are opposed to the spirit and letter of the Jadeja Court settlement itself, and further that there is no arrangement existing between the Government and the Durbar whereby the latter could be considered bound to employ, as President of the Court, a Sub-judge from the Government service only or be barred from appointing any other competent person, if he happens to be not in the British service, or one who is already in the service of the State. The course now proposed involves the imposition of very serious restrictions, on the one hand, upon the authority and prerogative of the Durbar, and, on the other, upon the future prospects of those who enter the judicial service of the State to which now qualified men only are appointed as vacancies occur." You see it no doubt applied to the President of the Jadeja Court, the bar for the State of Cutch. To this communication the Political Agent replied that he was directed by Government to state that on consideration of the Durbar's representation His Excellency in Council, while not altering his views as to the high standard of efficiency at which the Jadeja Court should be maintained, was prepared to adopt the Durbar's suggestion to allow the arrangement made by them to continue as a temporary measure I call particular attention to that Time after time, time after time you find that when the Government is beaten on an argument of principle they say: "All right, as a special case we will do it or as a temporary measure" And then some day in the future when the question turns up again they say, "Oh, yes, but that was only a concession made for a temporary purpose, as a special case, and it proves the rule." It is a *most curious thing how claims are stretched by degrees over the State* by that kind of method, and—this was in 1919 after the then President had died—the Political Agent wrote, "I am directed to inform your Highness that Government accept the appointment of Mr. Juduram Purshottam as the President of the Jadeja Court as a temporary measure on the understanding that proposals for the appointment of a permanent incumbent are submitted to Government by the end of August, 1919, at the latest" On the receipt of this communication the Durbar submitted a representation to His Excellency the Viceroy, in which they traced the whole history of the question, viewed in the light of the Treaty position of the Durbar. This had the desired effect, and the Durbar's right to the appointment of the President was recognised. The comment there, Sir, is that unless this State had happened to be presided over by a gentleman with a good deal of courage and strength of mind, that would never have happened.

Colonel Peel: Was Mr. Purshottam, who was appointed President of the Court, a Dewan or Deputy Dewan?

H.H. The Maharao of Cutch: Originally the Dewan or Deputy Dewan, who had executive functions, was deputed to preside over the Court. Subsequently that arrangement has been altered and the man who presides as the Judge of the Court is entrusted, as a rule, with judicial functions only and is given the *ex-officio* title of Deputy Dewan, to conform to the letter of the settlement of the Court.

Colonel Peel. My only comment was that the agreement appeared to have been broken by both sides It seems to me an odd way of keeping the rule, to say that the Dewan or Deputy Dewan should be President of the Court and then to select a President of the Court—whoever selects him—and to make him afterwards Deputy Dewan.

Sir Leslie Scott: His Highness would like to answer that question himself.

H.H The Maharao of Cutch: I did not exactly follow the question.

Colonel Peel· It seems to me that, on the face of it, the original agreement of 1875 that you have got down here appears to have been broken by both parties to it.

H.H The Maharao of Cutch In what way, Sir?

Colonel Peel It says here, " His Highness' Dewan or Deputy Dewan will also be appointed member and will be *ex-officio* President of the Court " Surely it is breaking that agreement if you select somebody from outside, and then appoint him Deputy Dewan afterwards?

H.H. The Maharao of Cutch: The Dewan or Deputy Dewan has executive functions Would you approve of the appointment of an executive officer to carry out judicial duties as well?

Colonel Peel: I would not approve or disapprove. I was only saying that the original agreement said so That is all.

H.H. The Maharao of Cutch. With the object that the judicial officer should be purely a judicial officer, and not an executive officer.

Colonel Peel I dare say there may have been a very good reason I am only saying that, according to the original agreement, on which I understand you rely, that was the intention, which has been used to pave hell

H H The Maharao of Cutch That was also under advice

Sir Leslie Scott The advice of whom?

H H The Maharao of Cutch Of the Political Officer

Sir Leslie Scott Would you note that answer His Highness says that to appoint a gentleman who only had judicial functions was done on the advice of the Political Officer

Chairman· We must adjourn now.

Minutes of the Evidence given before the Indian States Committee at Montagu House, Whitehall, S.W.1.

Thursday, 8th November, 1928, at 3.30 p.m.

PRESENT:

Sir HARCOURT BUTLER, G.C.S.I., G.C.I.E., *Chairman.*
Colonel The Honourable SIDNEY C. PEEL, D.S.O.
Professor W. S. HOLDSWORTH, K.C.
Lieutenant-Colonel G. D. OGILVIE, C.I.E., *Secretary.*

Their Highnesses the MAHARAJA of KASHMIR, the MAHARAO of CUTCH and the MAHARAJA of NAWANAGAR.

The Right Honourable Sir LESLIE SCOTT, K.C., M.P., appeared on behalf of the Standing Committee of the Chamber of Princes.

Sir Leslie Scott: In connection with the calculations in relation to military expenditure made in the economic part of the introduction of which a rough proof was given to you before the sittings last month, I want to ask whether you could obtain from the India Office certain information. I have had typed out what I want. (Handing document to the Committee.) On behalf of the Standing Committee I venture to ask whether you could obtain information. I expect only rough figures; I do not expect great detail. "The Indian States Committee is requested to obtain from the India Office a statement showing in columns (1) names of territories ceded for support of military forces under various Treaties by different States, (2) total revenue yield stated or estimated in or at time of Treaty, (3) present total revenue yield of each; (3) being given in a form convenient for comparison with (2). The Standing Committee of the Chamber of Princes need this in order to show the actual facts to-day of the financial position of the States in relation to British India in respect of military expenditure, as required by Part II of the Reference." Perhaps you could kindly ask, Sir, whether that is feasible or not, and let me know what the answer is?

Chairman: Yes.

Sir Leslie Scott: Now, Sir, the next case, that of Gwalior (page 1651), is a curious and interesting case. In 1858 the Residency at Gwalior was given some land at a place called Purani Chhaoni. The area of land was considerable, nearly a thousand acres. In 1860 the Residency was moved from that place to close to Morar Cantonment; it gave up to the Durbar the land that it had previously had, and received in exchange land near the Morar Cantonment, which included a village called Jarerva. That was in 1866. A question arises, but is not raised directly by the case; it underlies the case. It is this: Where a Residency is given land by a State, in my respectful submission, it should be regarded as being given for occupation in connection with the Residency and only for Residency purposes. There can be no justification for the Government of India or the Residency

demanding an area of land larger than that, or a right to use the land for the purpose of making profits out of it. If it be regarded from the point of view of the Government, obviously in sending the Resident to the State the Government is not in a position to demand that the State shall pay for the cost of the Residency, *a fortiori* it is not entitled to demand that the State shall give to the Government a revenue arising out of the land from any source whatever If it be regarded from the point of view of the Residency as distinct from the Government, it is obviously wrong that the Resident—I mean the incumbent of that office—should be making private emoluments out of the use of the Residency land And you will remember that in 1905 Lord Curzon sent round to the Service a very strong order saying that the receipt of any money or money's worth by the Political Department individually from the States was wrong and must be stopped. That was a decision that was obviously right. The principle, of course, is plain, that the Resident's primary duty is to the Government of India, and, as such, he ought not to be in receipt of any money or money's worth from the State which may have an interest divergent from that of the Government of India, in which case he would be put in the morally wrong position of having a personal interest which might conflict with his duty The dividing line from a system of that kind and bribery is, of course, obviously one of degree and of motive. It is a system that is in itself dangerous, capable of abuse and therefore wrong, and Lord Curzon was quite right in saying it must not exist. In making that submission of course I am not blaming anybody, I am prepared to assume that it is a system that has grown up very largely out of courtesy and no more. I am not blaming anybody But it is obviously wrong, and consequently any notion of profits out of the occupation of such land belonging to the Resident as distinct from the Government of India must be entirely excluded. If then there is no ground why either the Government of India or the Resident should have such profits, it cannot be right that either the Government of India or the Resident should insist vis-a-vis the State upon such profits being made

I thought it essential to make those very short submissions in order to make this case clear Now, Sir, between 1866 and 1888 an arrangement existed between the Resident and the British Cantonment authorities for dealing with the revenue which was in fact received out of the Residency lands and out of the Cantonment lands from the sale of excisable liquor, the Abkari revenue The arrangement made between the two authorities, on the assumption that they were entitled to have the revenue, was that the Resident should have six weeks' takings of the year and the remaining 46 weeks should go to the Cantonment That was an arrangement made between themselves with which the Durbar had nothing whatever to do In 1886 the Morar Cantonment was given up by the British troops and taken over by the Durbar troops, and the Durbar troops thenceforward occupied the Morar Cantonment (Aitchison, Vol IV, page 29) As you probably know, Sir, there has been, and may be still, a rule of sound military policy to keep away drink shops from the immediate neighbourhood of Cantonments Consequently during the period that the British troops were at Morar, in the Residency area, which was within the three-mile limit of the Cantonment, which is the limit applied for

that purpose, the Residency did not make any money out of selling drink. It merely had its share of the total drink profits raised by the Abkari revenue of the whole area, Cantonment area and Residency area taken together.

When the Cantonment was taken over, the Resident raised the question as to what was going to happen to his share of the excise income. At first he claimed the right to let the Abkari rights in this village of Jarerva, which was within three miles of the Cantonment, in the ordinary way by contract. The Durbar said: "No, this is not right. It is not any more right that there should be drink sold in the neighbourhood of our troops than it was that drink should be sold in the neighbourhood of your troops" It was arranged between them that instead of his letting the Abkari contract out in the market, he should receive Rs.200 a year from the Durbar (Letter No. 681, dated 10th June, 1886, from the Durbar). My submission is that that was a payment that ought not to have been exacted, and ought not to have been given; but there it was Subsequently to that, he said that he had six weeks' income from the Cantonment Authorities, and that he wanted to revert to that because it was worth more than Rs 200; it was worth Rs 370 odd So, for a time, that was given to him (12th June, 1890). Then, later on, he said the settlement of the Revenue land was coming to an end shortly, and on the re-settlement he believed that his revenue would fall, and that he must have it made up. He told the Durbar that he had offers by which he could let the Abkari contract for very large figures. I think it was Rs 1,250 They replied at once that he could not possibly let the Abkari contract for that, even assuming that he was entitled to do it, except on the basis of its being used for illicit smuggling. If he let it for that, the only man who would take it would be a man who would say to himself: "Well, I can sell drink at a lower price than they can anywhere else, because I shall get it free of the State, the Durbar, duty." The Resident recognised there was force in that point of view, but he insisted on being paid; and they finally agreed to give him Rs 550 (No. 635, dated 29th March, 1894). Then subsequently in a similar way it was raised to Rs. 700 (Letter No. 621, dated 31st January, 1906, to the Resident, and his reply No. 1226, dated 5th February, 1906).

Now the complaint of the Gwalior State under this particular head A (a) xix, is that the Resident did not stand by the arrangements that had been made, but kept upsetting them Of course, this is far more important than the mere question of standing by the agreements that were made If you will kindly look at the points, I will take them as shortly as I can; but that is the gist of the matter. The settlement of the Rs 200 lasted for about three years; in 1889 the Durbar gave a combined contract for the Abkari of Morar, Lashkar and Gwalior for a lump sum Seeing that the combined revenues had increased, the Resident raised the question of an adequate compensation for the Excise revenue of the Residency lands, and insisted on the restoration of the arrangement which subsisted at the time of the British occupation of Morar, by which he used to get six weeks' income. The Durbar, 12th June, 1890, agreed to the demand, and promised to pay a sum of Rs 373—that is in local coin—annually to the Resi-

dent. That sum represented six weeks' income of the Morar Excise. My submission is that he had no right to make the demand at all either for himself or for the Government. Whether this money was treated as a local fund of the Residency, or whether it went to the Government, is immaterial for this purpose A few years later the Resident (no reference quoted) wrote to the Durbar to say that in view of the loss which was accruing to the Residency local fund by payments of six weeks' income as compared with the high offer of Rs.1250 received by him for a separate lease for the Abkari of the Residency lands, he proposed to give a separate Abkari contract of the Residency lands. The comment on that is that it was not reciprocity to try and set up a drink shop within the three-mile limit of the Durbar troops, when there had been no drink shops within the three-mile limit of the Morar Cantonment during the time of its occupation by the British troops. The Durbar opposed it, and after long correspondence Colonel Robertson, the Resident, admitted (No. 1355/697, dated 28th February, 1894) that "it would be difficult to prevent the contractor from attempting to make a profit by selling liquor at lower rates than obtain in Morar or Lashkar whilst the enforcement of the stipulation obliging him to sell only to inhabitants of these villages would be impracticable" He also recognised that "Looking to the number of the liquor drinking population within Residency limits, a yearly contract for Rs 1,200 would be excessive." He further observed · "It has been roughly estimated that a legitimate business of liquor selling within the Residency villages might now bring in about Rs 700 per annum, but if the Council are prepared to agree to a yearly payment of Rs 550 (British rupees), so long as the present contract lasts, I will accept this sum as an adjustment of our claim to a share in the Abkari revenue" The Council agreed to that (No 635 dated 29th March, 1894) Then ten years later, or thereabouts, the question was again opened by the Resident (No 5131 dated 14th June, 1905) He thought that "The Residency lands have been over-assessed as regards land revenue, and that when the settlement term expires lower rates will have to be introduced, involving a considerable loss of revenue In the circumstances I have to see how the loss I anticipate can be made up in other ways I find that in 1903 unsolicited applications were received for the right of vend of liquor in the villages in question for Rs 1,100 for one year and Rs.1,225 for a term of seven years These figures are more than double what I am *now receiving from the* Durbar, and were I to put up the right of vend to public auction, it would probably reach Rs 1,500." In another paragraph he observed · "I need scarcely say that I should much prefer to receive through the Durbar, say, a sum of Rs 1,000 per annum for this contract, rather than Rs 1,200 from some outside contractor" The Durbar, in their reply (No. 4315 dated 13th October, 1905) stated "(1) That the reasons, for which similar occasional offers were made for a separate lease of the Abkari of the Residency lands were discouraged by Colonel Robertson in 1894, are still in existence" Then the next paragraph is very striking "(2) That the Excise revenue of the State gives an incidence of 8 pies per head, and the highest average of Kalali income in the State does not exceed 30 pies per head; but in the case of Residency lands the Excise income at the present figure (Rs 550) gives an incidence of about 15 annas per head"

—that is 180 pies at 12 pies per anna—" exactly six times the Durbar's maximum incidence. Even the present figure represents almost double the income which the Residency lands should be entitled to get for their *share out of the Excise* income *for Morar Cantonment* under *the old* arrangement of 6/52nds. (3) That the offer of Rs.1,200 for a separate lease of the Abkari of the Residency lands is unquestionably ill-motived, as having regard to the population of the Residency lands, the contractor cannot be expected to make a good bargain of it, and pay the amount of his lease regularly without having recourse to illicit measures for the sale of his liquor, which would be detrimental to the Excise administration of the Durbar. (4) That since there has been no substantial increase in the territorial limits of the Residency lands or of the liquor-consuming population of Mauza Jarerva giving better prospects of Excise revenue, the share of Jarerva would not appear to admit of any increase, and the Durbar feels it cannot in all fairness be called upon to promise any further enhancement in the Abkari income of Mauza Jarerva on the score of excessive offers made to you by outsiders for a separate lease. (5) That the opening of a separate liquor shop in Jarerva would not be at all consistent with the courtesy which has hitherto been extended by the Durbar in closing *their liquor shops in the vicinity of Neemuch, and other British* Cantonments in conformity to the British Excise rules." Then the Resident wrote in reply a letter which I submit is all wrong (No 9477 dated 2nd November, 1905): "With much of the argumentative portion of the letter I am inclined to concur . . . it is my clear duty to obtain the most advantageous terms I can reasonably claim on behalf of the British Indian Government. . . . I would suggest therefore that the Residency share should now be raised with effect from the present year to Rs 700, as was apparently contemplated by Colonel Robertson If the Durbar will thus meet me half way, I will forego for the present our undoubted right." I venture, very respectfully, to submit that is wholly misconceived, in that there was no right, and he had no duty to the British Government, because the British Government had no right. The Durbar objected very much, but this was followed by a threat in the Resident's letter (No. 641 dated 20th January, 1906): "As things are I shall take an early opportunity of showing the papers to the A.G.G. and soliciting his instructions." Whereupon the Durbar submitted. I understand that that payment of Rs.700 goes on to-day. I venture to submit it is all wrong. There is no justification for it, in my submission. That is the case, and I will not enter into any further details on it.

At page 1661 is another Gwalior case. It is quite a different type of case. It is a complaint that the agreement made between the Government of India and Gwalior in relation to the tribute, *inter alia*, of Khilchipur has been broken Gwalior says (and I will show you its grounds) that, under the Treaty of 1860, the tribute of Khilchipur, which had been assigned to the Government by the Treaty of 1844 as part of the security for the payment of 18 lakhs of rupees for the maintainence of the contingent force, was transferred back by the Government to Gwalior, Rs.13,500 in amount; that the Government under various excuses have failed to carry out that agreement, and have stuck to the Rs.13,500 per annum from 1860 to the present time without any right Khilchipur was a tributary of Gwalior. There

has been a long standing discussion between Gwalior and Khilchipur, both of whom are my clients, acting in support of the Standing Committee of the Chamber of Princes As to what the relations are or were between them I do not touch on at all. I mention that because I thought you perhaps, knowing about it, might think that this case had something to do with it. It has nothing to do with it at all. There is no doubt at all that Khilchipur was a tributary of Gwalior, and there is no question that this tribute continues to be paid to-day to the Government of India by Khilchipur Gwalior says that it ought to be paid to Gwalior, and not to the Government of India. Now, Sir, let us see what the facts are about it. Would you be so good as to turn to Aitchison, Volume IV? The Treaty of 1844, which is on page 78 was made, as you probably are aware, during the minority of the then Mararaja, and the object of the Treaty was to provide, *inter alia*, for an annual sum of 18 lakhs, you notice that in Article 3, in order to support a contingent that was to be situate within Gwalior, with a provision that certain lands should be assigned under the Treaty to Government by way of security, that if the revenue from the lands exceeded 18 lakhs the surplus would be handed back to Gwalior, and if it were less Gwalior would make it good, and the territories so assigned were scheduled. In 1860, after the Mutiny, a new Treaty was made which had three objects The three objects of the 1860 Treaty were, firstly, to confer upon Gwalior a reward of territory amounting to 3 lakhs of revenue for its help during the Mutiny; secondly, to effect an exchange of lands for mutual convenience and, thirdly, to make the original temporary assignment of lands under the 1844 Treaty permanent in respect of these lands which were not handed back by the 1860 Treaty Now, that is the gist of it, the three points

Now I want you, if you will kindly, to look on page 90 of Aitchison, Vol IV, at the table that there is attached to the Treaty of 1860 The first column is the column which shows all the districts composing the assignments under the Treaty of 1844. You see at the top of the left hand column "Names of districts, etc, composing the assignments under the Treaty of 1844" The acceptor is put in because besides land there were tributes Some of the tributes are included without mention in the land because they were paid at the provincial headquarters named, the words in italics Others were payable at headquarters separately and consequently are mentioned separately For instance, the third italicised name is Neemuch with four sub-districts, Jawad, Jeeran, Gungapoor and Ruttunghur. At the bottom you will see tributes of Kotah and various States The tribute of Khilchipur was included under the district of Ratangarh, within the province of Neemuch, and is not specifically mentioned, but it was part of the title handed over by the Treaty of 1844, and there is no dispute that it was included in Neemuch. In 1860 the whole of the dictrict of Neemuch as it had been received, that is to say, with all its revenue, including the tribute of Keshorai Patun, was handed back, and you will see under the head of "Remarks" "The whole of the Neemuch District is included herein, excepting" (a matter that has nothing to do with this) "which remains with the British Government" It is perfectly clear, therefore, from the Treaty of 1860 that as the Keshorai Patun tribute had gone to the Government under the Treaty of 1844 because it was a part of Neemuch so it went back to Gwalior in 1860 for the same reason.

Now, that is the point, and I want you just to follow the history *of the discussion upon it. You will find three or four letters which make* that quite clear. They were written at the time of the Treaty. You see Exhibit 1 (page 1664), Sir, dated the 7th May, 1844. It is out of date but I read it first for this reason. It was sent to Sir Robert Hamilton, the Resident, from the Political Agent in Bhopal: "I have the honour to forward herewith a copy of a Hindi Kharita, which I have received from Dewan Sher Singh Khichi, the Chief of Khilchipur, *wherein it is stated that from a communication received by his* Kamdar from Captain Winter at Neemuch, he (the Raja), is requested to henceforth pay the tribute which he has hitherto paid to Scindia, to that Officer, and that a Tumandar, has been placed at Khilchipur for the purpose of receiving it 2 No communication, it would appear, has reached the Khilchipur Chief from Gwalior directing him to discontinue the payment of the tribute to that court nor to pay it in *future to the British Government instead, and on this point, therefore,* he seems somewhat at a loss how to act, for though he is well pleased at the change, he would prefer the instalments being sent to Captain Winter through this Agency, where he keeps an attendant Vakil, and to which jurisdiction his State at Khilchipur belongs 3. The tribute instalments, if forwarded to this Agency, would obviate the necessity of keeping the Tumandar or any person on Captain Winter's part at Khilchipur, and is an arrangement, I conclude, to which objection will not be offered 4 The Khilchipur Raja has always been tributary to Scindia to whom he has had to pay a Tanka or tribute, of Rs.13,500 per annum." Exhibit 4 is the next one in order of date; it is earlier than the letter I have just read—22nd March, 1841; this is a Kharita from the Maharaja Scindia to the Chief of Khilchipur · "Whereas it has been reported to the Durbar by Balwant Rao Madho, Kamavisdar Pargana Patan anl Rantangarh Singauli, that you have not yet paid the revenue to the Kamavisdar's agents stationed in your Ilaqa and have declared that you will pay the amount on receipt of a communication from the Durbar, you are hereby directed that on receipt of this Kharita you should pay the amount to the Kamavisdar's agents stationed there Don't delay." Then Exhibit 2; this is from Sir Robert Shakespear, the Resident at Gwalior, to the Dewan of Gwalior dated 23rd May, 1844 · "Your letter . . . has been duly received, but according to usage, a *Chhut Chithi* (acquittance deed) *regarding* Khilchipur, has not hitherto been received in this office I have, therefore, the honour to request you to furnish me with a letter addressed to the Raja of Khilchipur, to the effect that as he had been paying tribute to the Durbar, in the same way, henceforward, he should pay the same to the Political Agent, Bhopal . . . ." Then Exhibit 3 is the Kharita to the Chief of Khilchipur (25th May, 1844) · "Whereas *the Durbar have assigned the Pargana of Ratangarh Singauli to the* British Government for the expenses of the contingent, you are hereby requested that you should, in future, pay the amount of Tanka which you have hitherto paid to the Amil of the Durbar to the Political Agent at Bhopal" Now you see there, Sir, it is because the Pargana of Ratangarh is assigned that the tribute is assigned, and Ratangarh is one of the places mentioned at page 90 in Volume IV of Aitchison. Then Exhibit 5; this is from the Dewan of Gwalior to the Resident (27th February, 1841) "Certain Mahals of the Darbar Ilaqa have

been ceded over by the Durbar to the British Government for the expenses of the new contingent, *vide* Schedule "A" of the Treaty, dated the 13th January, 1844 In the Schedule referred to, Pargana Ratangarh is entered as yielding a revenue of Rs 1,60,000, while the revenue of Ratangarh with its three other Taluqas, viz., Singauli, Taraf, Patan and Khilchipur, is stated to be Rs 2,19,969." The revenue of Scindia, etc, you see from those various documents But it is quite clear, Sir, that the tribute of Khilchipur was part of the district of the Maharaja of Ratangarh, within the District of Neemuch, and it was so assigned in 1844 If then, it was so assigned in 1844, it must necessarily have been re-assigned in 1860, and on that assumption I want you just to look at the correspondence that took place There can be no question about it, of course, on those facts it is established quite clearly The Durbar's records having been in a disorganised state, it was in 1908 (Exhibit 6) that they requested that "the tribute paid by Khilchipur to the Government from 12th December, 1860, up to the present day, may be refunded to the Durbar, and Khilchipur directed to pay the tribute in future to the Durbar" The Government of India replied (Exhibit 7—Letter No 6537 dated 14th October, 1909, from the Resident) that "the Durbar's claim to the Khilchipur tribute rests on the assumption that the amount of this tribute was included in the revenue of the Ratangarh Pargana The Gwalior Durbar, however, have failed to produce any evidence whatsoever to substantiate this assumption"—That is quite wrong It is obviously no assumption at all It is proved, quite conclusively —They further argued: "There is no mention of this tribute in the account of the land revenue . . " Of course it is not, because the tribute is not land revenue I need not read the rest of that The Durbar, in their reply, Exhibit 8 (No. 4250 dated 4th December, 1909) make a very clear statement. It is a long one, and I am not going to read it in detail, but there are three or four paragraphs of it to which I wish to call your attention.

Colonel Peel: May I just ask you a question, to clear my mind? In Exhibit 5 it says: "In the Schedule referred to, Pargana Ratangarh is entered as yielding a revenue of Rs 1,60,000, while the revenue of Ratangarh with its three other Taluqas, viz, Singauli, Taraf, Patan and Khilchipur, is stated to be Rs.2,19,969" Is there a distinction between Pargana Ratangarh and the Taluqas, the rest of those places?

Sir Leslie Scott: May I just ask Colonel Haksar to deal with that, Sir.

Colonel Peel: It does not matter much to your point, but I am a little confused.

Sir Leslie Scott: Yes, I think I asked this of Colonel Haksar yesterday and I cannot remember what his answer was. Would you be so kind as to put the question to Colonel Haksar?

Colonel Peel: What I want to know is this: Whether Pargana Ratangarh is distinct from the Taluqas mentioned. It says "The revenue of Ratangarh with its three other Taluqas" and then instead of giving three it mentions four. The reason I ask that is because the Government say (Exhibit 7): "The Durbar's claim to the Khilchipur tribute rests on the assumption that the amount of this tribute

was included in the revenue of the Ratangarh Pargana" and if I look at Exhibit 5, I appear to find, no doubt I am wrong, a distinction between the Pargana Ratangarh mentioned and the rest of Ratangarh with its three other Taluqas, which include Singauli, Taraf, Patan and Khilchipur.

Colonel Haksar: Might I explain Exhibit 5? I hope to prove to your satisfaction that what is stated there does not affect the question of the tribute of Khilchipur. If you look at the map of Gwalior you will find there is an enormous district called the District of Mandsaur. Even to-day it is in that district that Neemuch lies, and it is in that district that the Taluqa of Bhainsauda referred to in this Exhibit lies At the date of this letter the Durbar for the purposes of revenue, as well as of the lands assigned, sequestrated the Taluqa of Bhainsauda, lumping it as it is lumped to-day with the district of Mandsaur, taking it away from Ratangarh to which this revenue was being credited They say here that the revenue of Bhainsauda is included in the revenue of Ratangarh It is made clear that the revenue under the head of Ratangarh was more than the revenue merely of the Pargana of Ratangarh.

Sir Leslie Scott Then the revenue of Ratangarh is not necessarily the same as that of the Pargana Ratangarh?

Colonel Haksar· Exactly. The revenue of Ratangarh, as the Exhibit shows, was more than that of the Pargana of that name.

Sir Leslie Scott: Is Pargana a larger area?

Colonel Haksar. Pargana means a sub-district. The district was Neemuch which comprised Jawad, Jeerun, etc., and the revenue derived from the different areas was credited under Pargana Ratangarh so much, under Ratangarh so much. Here what we are trying to do is to say that so far as the revenues of the territories assigned to them are concerned, those revenues do not include the revenue of Bhainsauda as shown in the revenue accounts of Ratangarh. I will read the sentence from Exhibit 5: "The revenue of Taluqa Bhainsauda was hitherto included in the Pargana. Now in accordance with the Durbar's orders the Taluqa of Bhainsauda, the revenue of which is in excess of the Jama (revenue) of Ratangarh, etc." That means to say that if you look at the revenue papers and find that the revenue of Bhainsauda is included in the revenue of Ratangarh you are not to assume that you will get the revenue of Bhainsauda as part of Ratangarh revenue; you will only get the revenue of the Pargana of Ratangarh

Sir Leslie Scott: I think Colonel Peel wants to know what this document means Do you say that the tribute of Khilchipur is included in Ratangarh or in the Pargana of Ratangarh?

Colonel Peel: The matter is rather complicated I do not think it matters much After all, your point is that there ought to be some way of deciding this dispute.

Sir Leslie Scott: The point is, that the tribute went back in 1860 in exactly the same way as it came to the Government in 1844

Colonel Peel: Your point is that that ought not to be decided by the Government of India alone.

Sir Leslie Scott: Yes I went further. I submitted it was quite plain it must have gone back in 1860 because the language of the Treaty of 1860 is exactly the same as the language of the Treaty of 1844 by which they got it. They got it as part of Neemuch, and when they handed back Neemuch the tribute had to go with it. Will you kindly look at pages 348 and 349 of Aitchison, Volume IV? Look first of all at page 349. This is a "Translation of a Perwannah from the Maharajah Sindia to the Dewan of Kilchipur. Blessings attend us, we pray for your welfare. Whereas Pergunnah Ruttungurh Segowlee has been ceded by the Durbar to the British Government for the expenses of the contingent force, you are desired to pay the revenue thereof, which you have hitherto paid to the amil of the Durbar, to the Political Agent at Bhopal without fail" On page 348 "Translation of a letter from Captain Francis Butter, Superintendent of Jawud Neemuch to the Dewan of Kilchipur" He was a British Officer appointed by the British Government after the Treaty of 1844 to superintend the assigned districts, he was Superintendent of one of the assigned districts, namely Neemuch "The revenue of Kilchipur, which you have hitherto paid to the Durbar, is now assigned by Alijah for the support of the British contingent force, and this circumstance may perhaps have been communicated to you by the Kamaisdar of Patun The Kamaisdar has also written to me to say that the revenue amounts to Boondee Rupees 13,500 which you will now remit to this place" The next little bit does not matter "As there was a man at Kilchipur sent by the Kamaisdar of Patun, so now, according to custom, a naib toomandar on my part will remain there. Send me a copy of the engagement according to which you pay the revenue." You see it was because he was in charge of Neemuch that he was in a position to collect tribute which belonged to Neemuch and had been assigned with Neemuch under the Treaty of 1844, as you see on page 349: "Whereas pergunnah Ruttungurh Segowlee has been ceded by the Durbar to the British Government for the expenses of the contingent force, you are desired to pay the revenue thereof"—and part of the revenue thereof was the tribute of Kilchipur 13,500 Rupees Colonel Haksar asks me to draw the attention of the Committee to the further point in column (C), page 90, in Aitchison It is explicitly stated that the revenue there mentioned is that which is "Remaining with the British Government to be transferred in full sovereignty under Article 7 of the Treaty of 1860," and unless this tribute is a part of that they have not got it—and it is not the case; it is not there because it has gone back It was received as an incident of Neemuch and goes back as an incident of Neemuch and is not one of the various tributes which are specifically mentioned at the bottom of column (A) and at the bottom of column (C) where they are identical, the figures of column (C) are identical with the figures of column (A) in regard to the tributes I am sorry to go into the details. You see there is no question at all that the tribute was simply a part of Neemuch assigned in 1844, re-assigned in 1860. Now, Sir, that being so, if you would glance at Exhibit 8 I will not trouble you to read it in detail now, the argument is made perfectly clear by the Durbar (No. 4250, dated 4th December, 1909, to the Resident): "18 From whatever point of view, therefore, the question of the Khilchipur tribute is approached, the conclusion is forced upon one that not only

did the Government not intend to continue taking the Khilchipur tribute after 12th December, 1860, but that they had no right to it. That it has continued to be paid to the Government has been due to a mistake The mistake having now been discovered, it is only fair and just to recognise and rectify it" Exhibit 9 is the Government answer (No. 3364-304-11, dated 26th July, 1911, from the Resident). When that was written the Government, of course, had the documents in Aitchison that I have read and the exhibits 1 to 5 that I have read to-day, because they were sent with the letter that I have just read (Exhibit 8) This is the answer: "The matter was fully and carefully considered by the Government of India in 1909, and the reasons which led them to reject the Durbar's claims were indicated in Major Spence's letter dated 4th October, 1909"—that is Exhibit 7 —"The Durbar now directly challenge the validity of these reasons and put forward a representation containing several plausible answers to the arguments of Government which are based both on general reasoning and on particular documents. Fresh documentary evidence has recently been found among the records in the office of the Political Agent in Bhopal throwing considerable light on the status of the chiefship"—That is to say, as to whether he was a feudatory of Gwalior, as Gwalior contended, or merely a tributary, as Khilchipur contended—"and these records, contained in files marked 'A,' 'B,' 'C,' 'D' and 'E,' together with an exhaustive note on the subject, are forwarded to you for the information of the Durbar. The Government of India have read these papers very carefully and are now more than ever convinced that Khilchipur has been treated from the beginning as a separate Chiefship and that the Gwalior Durbar's claim to tribute from it is untenable."

The question as to whether it is a separate chiefship or a feudatory is totally irrelevant to this question, it has nothing whatever to do with it There is no reason at all advanced in this letter in answer to the claim that the tribute belongs as of right ever since 1860 to Gwalior The papers there referred to of course were returned, I am told by Colonel Haksar, to the Government, and are not in the possession of the Durbar, they did not keep copies. They can obviously have nothing whatever to do with the case. That is that case, and it is a very strong one, in my respectful submission.

Then the next case is Jodhpur (page 1667). The point is an extremely short one. There is a place called Umarkote on the south-west side of Jodhpur, as Jodhpur is to-day, in British territory. That was acquired by Jodhpur in 1780 by fighting, and was taken from it by fighting by Sind in 1823. When the expedition against Sind took place in the 'forties of last century, the assistance of Jodhpur was wanted by the Government. Jodhpur co-operated, and as a reward they were told that they should have back this district which had been taken from them by Sind when Sind came into the possession of the British The record there is that at the time instead of giving the district back, a revenue of Rs 10,000 a year was substituted by the Government for it; but it was kept for the time being on the ground that it was a valuable frontier post, I suppose because it was thought that Sind might still be turbulent. Times have changed; obviously it is long long since there was any danger to constitute it an important frontier post, and the understanding

was, as recorded by the Political Officers, that it should be given back. That is an instance of the kind of declaration of intention which is not an agreement, which is within the general heading of this No. A(a)xix. That is all it is necessary to say about it

The State of Kotah (page 1677) and the State of Baroda are alike in that they are both to-day providing large sums to the Government for the support of troops. They are neither of them, I believe, or they were not, supplying Imperial Service troops because they felt that they were making very large payments for troops which were no longer being provided in accordance with the arrangement under which they made the payment. Kotah pays annually a sum of two lakhs of rupees as a contribution to the maintenance of a particular body of troops, long since disbanded, but the Government stick to the two lakhs of rupees, so that the total amount paid by Kotah to the Government to-day is a very serious annual charge. Kotah alleges a grave breach of understanding by the Government The troops were actually taken away in 1857 or thereabouts I think, just after the Mutiny, and all ground for the continuance of the payment disappeared; and yet the Government have stuck to the money Under the treaty by which these troops were provided, Article 9 of the Treaty of 1817, the troops were for preserving internal order

It is only one reference I am going to make, if you look at page 1698 This is a Memo of facts agreed to by His Highness the Maharao on the 17th March, 1838 (Exhibit 6) "6 I agree to the keeping of an army selected from the forces of the State, with Officers taken from the Military Department of the British Government for its management and superintendence." That is the management and superintendence of the State. And (page 1718) it is clear that the agreement about the troops was very unwillingly signed, because you get this from his Highness, the then Maharao, to the Political Agent, on the 23rd March, 1838, Exhibit 5: "I am herewith returning the memorandum of stipulations"—that is the one I have just read—"proposed by you, sealed, though quite against my will, merely to win the satisfaction and abide by the counsel of Colonel Alves and yourself" This provision—the one I read in the stipulations—was subsequently embodied in the Treaty of 1838 In article 5 of this engagement it was stipulated:—"The Maharao agrees for himself, his heirs and successors, to maintain an auxiliary force, to be commanded and paid by British Officers should the British Government decide that the measure is expedient," and in Article 6, that "the expense of such force shall never exceed three lakhs of rupees per annum."

The force has never been utilised for the purpose for which it was created, the maintenance of peace and order in Kotah State and its protection against invaders of its own frontiers The levy of this special charge of two lakhs of rupees per annum on Kotah State, for the general defence of the Empire, places it in an invidious position. The general practice is that the contribution of the Indian States to the defence of the Empire shall take the form of Indian State troops, drawn from the States concerned, bearing the names of the States of origin, and specially trained in order to take their place in line with the British Army. Since 1857 any special connection of Kotah with the force for which it pays has disappeared; in this important respect it is prejudiced vis-a-vis the Indian States which contribute to the

defence of the Empire. The charge imposes a heavy burden on the finances of the State. The total payments which it now makes to the Government are Rs.4,34,720, made up of tribute Rs 2,34,720 and special contribution for the maintenance of the Force, Rs 2 lakhs. This is, the Kotah Durbar believe, the largest amount paid by any State in Rajputana. It has been taken into a permanent obligation. The Durbar's contention is that the force provided by the Treaty of 1838 was of a special character and was raised to meet a special contingency It was never meant to be a permanent obligation on the State and should have ceased as soon as the circumstances necessitating the raising of the force came to an end The Treaty of 1838 was in itself a temporary measure as the existence of the new principality as a separate State depended on the survival of Madan Singh's lineal descendants. The words: "That the military arrangement would be cancelled without difficulty in a better posture of affairs," vide Exhibit 7 (Letter from the Maharao to the Governor-General in Council—no reference or date quoted) also confirms the same view. The Durbar therefore rightly believed that as the *raison d'etre* for the liability imposed upon Kotah by Articles 5, 6 and 7 of the Treaty of 1838 had ceased to exist, the Government of India were not justified in demanding the payment of two lakhs of Rupees from the Kotah Durbar, at any rate from 1899 onwards As a matter of fact, they have demanded the maximum of three laks, I think so—I am not quite sure about that, but I think so. That is the Kotah case I think that is enough under that head, A (a) xix, to illustrate the position, though there are many other cases there.

I now go to Vol 4, which consists entirely of economic cases. I begin with the salt cases under Head A (b) 1. The salt cases are very remarkable. The salt history of India goes back, as you know, to the beginning of the 19th century. I am going to take a case—which is not the *most* striking case, but it is a striking case—of Radhanpur, because it is earliest in point of date (page 1854) The State of Radhanpur had from time immemorial enjoyed the right of manufacturing salt, and the salt works at Anvarpore were well known in this part of the country. Anvarpore is in the State. As you know, Radhanpur State is in the Bombay Presidency, not very far from Kathiawar The manufacture of salt by the State in these works went on uninterruptedly during the time of the Mogul Emperors and their successors, the Mahrattas. As the State was selling salt at a very low price the income was not very big, but the production was considerable, as the records show, two lacs of maunds having been produced in the year 1823 A D. About this time Major Miles, representing the East India Company, began correspondence with the State, proposing that the Company should take over the Anvarpore salt works from the State for certain compensation. The then Nawab naturally resisted this proposal. After his death there was a Regency, owing to the minority of the Ruler. The question was re-opened with the Regent Mother, who, eventually yielding to the pressure which was brought to bear upon her, made an arrangement in 1830 by which the Agar (salt) was made the joint property of the State and the East India Company, with equal shares. Agar is the name of the salt pan. I think. How extremely unwilling the State was to part with its right to manufacture salt would appear from the fact that it took a period of seven years for the State to yield in this matter. That is

seven years, when there was only a minority. From 1829 the production of salt in the Anvarpore works began constantly to increase, and the records show the output in the year 1837 was 4½ lakhs of maunds. That is the Company and the State in partnership, each having a half. In the year 1837, the Government suggested that the State of Radhanpur should surrender the whole of the salt works to Government, in consideration of a money compensation payable every year. The then Nawab Sahib also was most unwilling to make this surrender, and he, on the contrary, demanded that the half ownership which Government had acquired over the Agar in 1829 should be given up by Government, and the Agar should be completely restored to the State, and added that he was willing to pay Government a sum of Rs 25,000 a year for giving up the right acquired by them in 1829. I want you to read, if you will, before I go any further, a letter (page 1856)—Exhibit I—from the Nawab himself to the Political Agent, dated 17th August, 1837 "During the time of my father, the Government asked for the Agar, but as he showed his unwillingness the Government did not touch the matter Again after his demise the Government opened the question, during the Regency of my dear mother, in my infancy, and asked for giving over the salt works to the British Government My mother also showed her unwillingness to comply with the requests, but repeated requests compelled her to give way, and she gave half part of the salt works to the Government on certain conditions. Major Miles, then Political Superintendent, Palanpur, told my mother, Jiviba, that by this act the State would not undergo any trouble regarding the salt works, and the friendship with the British became more durable In spite of this, it is very strange that the Government again asks for the remaining half part of the Agar. To my utmost sorrow, I am unwilling to comply with the request and part with my ancestral property in any way."

May I interpose with the observation that these Salt agreements disclose many instances of agreements forced by pressure out of States in circumstances which show that there was no consent such as is essential, in my submission, to a real agreement I am bound to submit that the whole of that policy is radically wrong, and inflicts a grave injury to the rights of the States

Would you now look at Exhibit 2 (page 1856)? This is from the Political Superintendent to the Nawab (dated 25th October, 1837) "The Government undergoes loss in the Anwarpur salt works as the other half is not in its control. His Excellency the Governor of Bombay, therefore, has issued a Resolution that the Government should take sole possession of the salt works, but doing so, the Government has not forgotten not to do any harm to the revenue realised by the Nawab Sahib from the salt works The Government has, therefore, asked me to request you to give the Agar to the Government on the receipt of a certain sum from the British Government. If you like, let the agreement be made for a certain period, say 50 or 100 years, or for ever. For this purpose, a man well acquainted with the salt questions, and who has at his heart much interest in the welfare of His Highness the Nawab Sahib may be sent to Palanpur to answer every query regarding this The Bombay Government made this Resolution on the 17th August, 1837." It is only the antiquity of that letter that prevents me making any further comment on it. The answer is Exhibit 3 (no date quoted): "With reference to the C

ment Resolution of the 17th August, 1837, I have to say that I am unwilling to part with my share in the Agar at Anwarpur as it is a chief source of my income. I am at a loss to know how the Government incurs loss, though the work is conducted by its own men. The Government knows that the salt works are the property of the Nawab Sahib inherited by him from his ancestors. I am much indebted for the kindness of the Government, but sorry I cannot give them the Agar. Kindly, with my respects, convey the above facts to the Government." Then there are similar letters which I will not bother to read. The next is Exhibit 4 (memorandum dated 11th May, 1839) This is from the Government "Everybody knows that the Supreme Government has the sole power to open and close any salt works, and this right has been received by the British Government from the Peshwas The Government does not think it right that the salt works should be conducted by the Nawab Sahib Up to now the Government has allowed the Nawab Sahib to conduct the salt works, from which it is not to be understood that the right of the Government regarding the salt works is repudiated. The British Government is not going to break off its usual relations with the State, and to discontinue favour shown until now. The Nawab Sahib may be given to understand that the British Government pay for the part of the Nawab eight annas on every Indian maund, and in no way the Government would put the Nawab Sahib to loss The Government will take the salt works in its hands, and thereby the trade will be increased, with the increase of product of salt. Thereby his subjects will be benefitted with the advance of trade." There is no shadow of justification in history for the allegation that the Peshwa had any right to open and close salt works, or that the Government has any right as his successor. This claim of paramount right to go into a State and close the salt works is baseless To impose upon ignorant Chiefs, as they were in those days, by assertions of power of that kind, is a gross wrong; and the whole history of this salt business goes back to a tainted source in this type of agreement made in the first half of last century. You see what is said there

Then take Exhibit 5, which is a letter from the Nawab to the Political Superintendent (no date quoted): "His Highness the Nawab Sahib is not in any way willing to give up the remaining part of the salt works at Anwarpur, but at the same time he is not inclined to displease the British Government." That is the whole point—cringing fear. " So the Nawab Sahib desires to dispose of the matter as under. When the Government wanted Agar in my father's time, had he given then, better compensation would have been received But he did not like to give the whole Agar, and so he gave half to the Government without any compensation from the Government, but, on the contrary, it was consented to carry on the work in the Agar jointly. But I can give the Agar on the undermentioned conditions: (1) An annual compensation of Rs.25,000 may be given; (2) As the salt works would go into the hands of the Government, it is impossible for the Nawab Sahib to levy transit duty on salt, and so a sum of Rs.7,000 annually may be given to the Nawab Sahib (3) For the use of the Durbar every year salt should be given free (4) The subjects of the Nawab Sahib may be given salt for their consumption on payment of cost price simply. (5) A certain sum and some quantity of salt, duty free, may be given

for charitable purposes, as they are always done by the Nawab Sahib (6) The State can recover its Vaje and Vero from the Agarias."—those are cesses, I suppose, of some sort—" (7) No encroachment be made on land which is not allowed for the salt works These terms may kindly be communicated to the Government "

This is the Government's answer Exhibit 6, (no date quoted): "(1) The Government is not prepared to give Rs 25,000 annually. (2) As to the transit duty on salt, Rs 7,000, the Government would make the salt so much cheaper that it would be impossible to collect the duty (3) The Government is willing to give salt, duty free, for the use of the Durbar (4) As for Article 4, the subject will be discussed later on. (5) For charity purposes adequate sum and quantity of salt will be given (6) The Nawab Sahib may receive his Vaje and Vero from the Agarias"—that is the tribute, I suppose—" (7) As for Article 7"—that is acquisition of land in future—" the work will be conducted according to the rules You are requested to state (1) How much transit duty is recovered by the State annually (2) What quantity of salt is consumed every year by the Durbar (3) What amount of money and quantity of salt are expended in charity"

Then Exhibit 7 is from the Political Agent (dated 4th November, 1839) " (i) Requesting to state the actual amount of transit duty the State recovers (ii) The new Act will come into force in the Anwarpur agar within ten days and so, if the Nawab Sahib will not remove his nakas, he will not get any remuneration for any subject, but will be allowed only to charge transit duty (iii) The Government has first informed the Nawab Sahib that by the new agreement he will be benefitted and would undergo no loss The Government will pay a certain sum in lieu of the transit duty, though the Government is not going to recover it from the merchants You and your karbarees have not understood the new agreement. It is as good as possible"—It is literally incredible!—" It is, therefore, given to understand that the Government has put the new Act in force in every salt works from the 15th December, 1837, and the agarias have been allowed to sell salt at their own rates. The Government only recovers the duty at annas eight per every Indian maund on the salt already sold (iv) A great deal of time has passed in the settlement of this matter, but we have not come to any conclusion. Please inform your karbaree to give proper answers and come to Anwarpur to take charge of the salt works No transit duty should be levied on salt in order to put the new Act in force. It should be given in writing that any sum as compensation given by the Government will be accepted. Now the Government have directed to give the consent without delay Further delay will go against your interest." "Directed to give the consent"—there is not much agreement about that!

It is thus clear that the Nawab Sahib was compelled to yield most unwillingly to the determined wishes of the Government to take away the Agar from the State. The resistance of the State was overcome by continued pressure from 1832 to 1840, in which year an agreement was obtained by the British Government from the Radhanpur State whereby the latter ceded to the former the whole of the salt works in consideration of an annual payment of a sum of Rs. 11,048. The amount of compensation so fixed was also highly inequitable, and the protests

and proposals of the State were not heeded. It was pointed out by the Nawab Sahib that the output of salt was yearly increasing, and that it was not fair to fix the amount of compensation on the basis of half of the income that Radhanpur was then getting. Under the agreement of 1840 it was provided by the 6th Article that the limits of the salt works taken over by Government would be fixed, and that no encroachment would be made on the other lands of the State, but that *if more land was taken, a fair price would be paid* *The original* limits of the salt works were extended, and, in 1853, as many as 12 wells for the manufacture of salt were sunk in land situated beyond the old limits. After repeated complaints on the part of the Durbar on this point, the matter was investigated in 1868 by Colonel Arthur, who recommended the Government that Rs. 3,600 per year additional compensation be paid to the Durbar On the 18th May, 1868, the Government of Bombay, by their Resolution, No. 1315, sanctioned Colonel Arthur's proposal and the same was communicated to the Durbar, who remained under the belief that the payment of Rs. 3,600 per year was sanctioned It appears that later on (in 1872), the Bombay Government altered their original decision and held that Rs. 3,600 was to be paid only once and not annually. The Durbar insistently applied to be furnished with the copies of the report and correspondence leading up to this order—that is including Colonel Arthur's Report—but Government refused to comply with the request and the Radhanpur Durbar is even now unacquainted with the materials upon which Government decided against it or with their reasons for such decision In the year 1875 Government entirely closed the Agar and ceased to manufacture salt at Anvarpore Representation on the above lines was made to the Government of India, but they were not pleased to reconsider the matter, merely on the ground that the relaxation of the agreement of 1840 would unfavourably affect their own salt revenues It is evident that the policy of Government in this matter has been entirely one-sided and that it matters very little if the prohibition unfavourably affects the State revenues. Just read the letter (page 1858) Exhibit 8 (No. 14 dated 24th January, 1873, from the Political Superintendent to the Nawab): "Late Political Superintendent, Colonel Arthur, had reported to Government to give compensation to you for additional salt works, but now the Government has passed a Resolution No 8149, dated 12th December, 1872, in the matter that Rs 3,600 were to be paid only once and not annually. Rs. 3,600 were not to be paid annually, and this has been clearly decided by Government in 1869"—this is really delightful, Sir—"The decision is reasonable, in the opinion of Government. Rs. 11,018 are being given to you for the closure of salt works and for the wells surrendered by you And now Government consider Rs. 3,600 reasonable for the land of 12 wells taken from you. Colonel Arthur had written that Rs 300 were decided per well at the time of agreement, but now, on inquiry, it appears that Rs 100 were decided. Still the Government, taking all these facts into consideration, will not object to the payment of Rs 3,600 for once In doing this, it will appear that Government have acted more generously than what it would have reasonably done"

The next case, Sir, is Kishengarh (page 1771) Shall I say, before I open this case, it is an astounding case. Before I say anything about the case itself, would you turn to the third of the three maps which are

attached to it (page 1784). It is headed "Rupnagar drainage." It is not very legible; would you like a little magnifying glass; I have got one here. (Glass and map handed to the Chairman). Your colleagues might like to glance at the larger scale map Kishengarh, as you know, Sir, is to the North of Ajmer.

Chairman: Yes.

Sir Leslie Scott: And the Sambhar Salt Lake, which is the place where all the salt is produced and manufactured by the Government of India, is at the north end of Kishengarh. That salt lake was the joint property of Jodhpur and Jaipur and acquired by agreement from them. If you now look at the third of the plans, Sir, you will see the Sambhar Lake lying on the line of Railway indicated on the plan that runs west, north-west and east south-east to Sambhar Salt Lake, and flowing down into that lake from the south-west is a stream called Rupnagar Nala which takes its rise in two branches, one called the left branch and the other called the right branch, in Ajmer The town of Ajmer is at the extreme south-western part of that map where you see the line of Railway makes a little loop and has a junction running south by south-south-east The word is almost illegible on this map because the Railway and something else comes over it That is where Ajmer is, so you get there the general lie of the territory The whole production of salt depends upon the availability of a sufficient quantity of water over the area known as the Sambhar Salt Lake The main supply of water to the Sambhar Salt Lake is that Rupnagar Nala stream with all its tributaries. That stream is also vital for the whole of the agricultural land through which it flows with its various tributaries both in Ajmer and in Kishengarh The State of Kishengarh has no interest in the Salt Lake; it gets nothing out of it, but its whole revenue depends upon sufficient water being available for its agriculture, and its only supply of water, except during the monsoon, is from these streams The rainfall of the district is only 13.19 inches, very small It is vital, therefore, to be able to collect water Kishengarh has suffered in two ways Firstly, the whole of its water has been taken by the Government in order to make salt, its population being denied the water for their agriculture, and, secondly, whilst that policy has been imposed by Government orders upon Kishengarh, the British District of Ajmer has been allowed to make dams to intercept the whole of the upper waters of the streams So that, not only has the injustice been done of taking away from Kishengarh the water that is essential for the life of its population and for the revenue of its exchequer, but it has been treated in that way whilst British territory has been treated quite differently If you turn now to the second map you will see it is on a larger scale and is only of the lower half, the southern half, of what you see in the smaller scale map that you have just looked at Just to get the point of contact between the two look at the smaller scale map first and in the middle of it you will see a letter "G" in a circle against the word Silemabad Now turn to the larger scale one; you will see Silemabad with a letter "G" against it, just west of the 51 minute meridian of longitude at the top of the map

Chairman: Right at the top.

Sir Leslie Scott: That is Silemabad, so you see the sort of difference of scale. This is about three or four times the size of the other.

Ajmer you see at the south-west corner of it The various writings in heavy type are the bunds and dams that have been made, some of them very large For instance, you will observe the one numbered 107 at Kair—a long black crescent on the left of the map.

Chairman: Yes.

Sir Leslie Scott. Well that bund is two miles long, as you see by the scale at the top of the map. If you glance over the map, you will see a large number of different dams and bunds holding up all the little upper tributaries of these streams, and some of them holding up the water at lower places like that one at Kair—that big one there. Those are all in Ajmer. In the upper waters of the stream there is only one dam in any portion of the Kishengarh territory. You get it more clearly if you turn to the first of these three maps which is a diagram Just in order to cause us a little inconvenience it is put south and north instead of north and south. South is at the top of the plan. You see that the vertical lines represent the branches of the Rupnagar stream. You see the Kair Dam, 107, shown there. Of all these dams on this diagram only one is in Kishengarh, that is the Nala Dam on the left stream just below the Kair Dam, all the rest are in Ajmer, so you see how the upper waters of the stream and all the gathering grounds for water collection purposes in the hills are covered by dams in the Ajmer district, letting very little water down to Kishengarh. If private owners were involved I should submit that the Ajmer owner was taking more than a reasonable share of water by that system of dams, and depriving the lower riparian owners of a reasonable share. It is excessive. I am not denying, of course, that water can be used for irrigation purposes, but to hold it up to that extent, I submit, would be a plain breach of the riparian rights of the lower owner, and that principle, I think, has been laid down by the Government of India in some political cases dealing with the irrigation plans from various rivers. But the point is, that Ajmer has been allowed to do it, being a British district, and you will find from the history of the case that Kishengarh has been absolutely prevented from utilising those waters You see that is obviously a case of very great gravity.

You get a useful statement here about the history of the Government Salt Works at Sambhar Salt Lake In the year 1870 the Government of India acquired on lease, from the Jodhpur and Jaipur Durbars, their right of manufacturing and selling salt and levying duties thereon, within the limits of the territory, then subject to the joint jurisdiction of Jaipur and Jodhpur, as well as such portions of the lake itself, or of its dry bed, as were under the said joint jurisdiction The terms of lease were:—(i) Annual fixed payment of Rs 5,50,000 including rent to Jaipur and Jodhpur Durbars (ii) A further fluctuating royalty payment of 40 per cent of the sale price of all salt sold in excess of a quantity of 17¼ lacs of maunds in a year. A maund is about eighty pounds, is it not?

Secretary: Eighty-two pounds

Sir Leslie Scott: The larger the quantity of salt manufactured and sold in a year from the lakes, the larger is the revenue earned by (a) the Government of India from Excise Duty and from profits or the

manufacture and sale of salt, (b) the Jaipur and Jodhpur Durbars from the fluctuating rate of royalty payable to them on salt sold.

Under this lease, called a Treaty, the British Government is authorised to exercise jurisdiction over the Jaipur and Jodhpur areas (leased) only in regard to the manufacture, sale or removal of salt, or the prevention of unlicensed manufacture or smuggling *Vide Clauses* 3 *and* 4 *of the Treaties.*

The proprietary right over the said land remains vested in the Jaipur and Jodhpur Durbars, who also retain and exercise sovereign jurisdiction within the leased area, in all matters, civil and criminal, not connected with the manufacture, sale or removal of salt, or the prevention of unlicensed manufacture or smuggling. *Vide Clauses* 5 *and* 10 *of the Treaties.*

In every case in which anything involving injury to private property is done by the British Government, or its officers, one month's previous notice has to be given to the Durbar, and in all such cases proper compensation has to be paid by the British Government on account of such injury. In case of difference between the British Government, or its officers, and the owner of the said property as to the amount of compensation, such amount is determined by arbitration *Vide Clause* 5 *of the Treaties.*

The manufacture of salt at Sambhar lake depends upon the quantity of water which enters it during the monsoon rainfall by the streams which carry into it the drainage of the surrounding country. These streams flow only during the monsoon and at other seasons of the year they are dry.

The catchment area of Sambhar comprises two main portions, which I have explained on the map. There is the Rupnagar Naddi, commanding a drainage area of 244 square miles, of which 184 square miles are in Kishengarh territory and the remainder is in Ajmer, British territory. According to the Sambhar Salt Authorities this area (a) has much drainage capacity, (b) is more to be depended upon to give an annual supply of water to the lake owing to the hilly nature of the country and its capacity for drainage, (c) is of vital importance to the salt lake, and its value is particularly great in years of short rainfall. (*Vide* Minutes of Evidence of Irrigation Commission, 1901-2, Native States Volume, page 25, paragraphs 8 and 9, memorandum by Mr. Ashton, Deputy Commissioner, Salt Department, Ajmer)

The other portion of the catchment area is that of the Mendha River in the territories of Jaipur and Jodhpur States (about 1,400 square miles). That is away to the north Note:—According to the salt authorities this, being level sandy country, requires considerable rainfall upon it, for the Mendha River to come, down in flood, when alone it can feed the Sambhar lake. This area, No. ii, though large, is thus of less importance than area No i.

To give an adequate idea of the importance of the Rupnagar drainage area to salt lake, it would be better to quote the Sambhar Salt authorities themselves Mr. Ashton, the Deputy Commissioner, Salt Department, Ajmer, in his evidence before the Indian Irrigation Commission (1901-02), made the following statements:—Answer to Question No. 8: "We do know that this year practically all the water we got was from the Rupnagar." Answer to Question No 9: "We

got practically no water from the North side. . . . The tract is so sandy that nothing but very heavy rain comes down at all, and we cannot depend upon it. The Rupnagar is our steady source of supply" Answer to Question No 12: "The regular rainfall is over the hills on the South side; even when the rainfall is slight we get water from the Rupnagar" Answer to Question No. 2: "The principal water that entered the lake this year came from the Rupnagar river. From that we shall get 12 lacs of maunds of Salt." NOTE:—This was a year of scanty rainfall.

The Government of India, Finance and Commerce Department (letter No 3779, dated 13th July, 1901, to the Honourable the Agent to the Governor-General in Rajputana) stated that: "(i) The question of the flow of water into the Sambhar lake is of grave concern to the Government of India. (ii) As the manufacture of salt depends on a sufficient supply of water in the lake, it is most inadvisable that anything should be done in the drainage areas which will be likely to diminish the supply." You will find, Sir, that this question is looked upon from the pounds, shillings and pence or rupee point of view as a revenue question for the Government. In the catchment area No 1 Rupnagar, which as shown is the principal and the only steady source of water supply to the lake, all the area in the British territory of Ajmer has been intercepted, as there exist (*vide* "Ajmer Tank Irrigation"—printed in 1915) no less than 20 large and small irrigation works (on the feeder branch streams of Rupnagar stream) having a capacity of 424,725,300 cubic feet of water (*vide* "Ajmer Tank Irrigation Notes and Plan, 1915"). They impound all available rain water, thus effectually diminishing the run off to Kishengarh side and thereby considerably lowering the spring level in Kishengarh territory, and the spring level, of course, affects the wells for agricultural purposes But in addition they serve considerably to diminish the total supply of water to the Sambhar lake (*Vide* paragraphs 11 and 14, page 25, Minutes of Evidence of Irrigation Commission, 1901-2, Native States Volume, Memorandum by Mr. Ashton, Deputy Commissioner, Salt Department, Ajmer.) The Rupnagar stream, thus heavily obstructed in its upper tributaries by Ajmer, drains into the Sambhar lake Surface water from the only remaining area of 184 square miles of Kishengarh territory is not, under the orders of the Government of India, utilised by the Kishengarh Durbar

Between the years 1891 and 1900 (20 to 30 years after the commencement of the lease) two large irrigation works (e g, at Kair and Ararka) were constructed in Ajmer territory, almost completely impeding the flow of water from Ajmer to Kishengarh on Rupnagar Nullah During the same period (1891-1900) many other irrigation works in Ajmer were considerably improved, enlarged or strengthened. But the Salt authorities did not then raise any objection and Ajmer did secure to itself the complete benefit of the use of its water in the catchment area of the Sambhar lake lying in British territory, as also of the area in the island territories of Kishengarh through which the branches pass There are some island territories mixed up with Ajmer belonging to Kishengarh.

In the year 1900 Kishengarh Durbar undertook, as a part of famine relief operations, the construction of a Bund in Salemabad on the

Rupnagar stream—that is the point marked "G"—in order to keep up the water level in wells which, it was feared, would be affected by the completion of a work on the Southern Branch of the river at Ontra in the Ajmer district The Durbar gave intimation of their intention to the Salt authorities, who (Letter dated 8th February, 1900, from the Assistant Commissioner) at once raised an objection on the plea that the more the supply of water was cut off from the Sambhar lake, the greater would be the loss in the manufacture of Salt, stating at the same time that they were not aware of the Ajmer authorities having already constructed two large bunds across the left tributary of the stream referred to above —That is almost incredible, Sir

The Commissioner of Northern India Salt Revenue (dated 24th February, 1900) enquired from the Kishengarh Durbar, if the Durbar would abandon the project for the construction of a Bund at Salemabad, if the Ontra Bund was not further extended, informing the Durbar that "probably the other Bunds on the Rupnagar Nadi will be removed" Very improbable Note —These tanks are those of Kair and Ararka in Ajmer (*vide* Map and Mr Ashton's evidence before the Irrigation Commission, 1901-2)

On the hope above given, a reply was sent from Kishengarh that His Highness the Maharaja (who was minor)—note how the minority comes in—would consent to abandon the Salemabad project "if the flow of the river were left uninterrupted" The further extension of Ontra dam in Ajmer was then stopped under the orders of the Government of India and the Kishengarh Durbar abandoned the Salemabad project.

In April, 1901, the Commissioner, Northern India Salt Revenue, wrote to the Government of India stating how certain tanks in the upper part of Rupnagar valley catchment interfered with the supply of water to the Salt Lake, and suggested that—(i) the Government of India should affirm generally the principle that the lake supply must not be further intercepted or impeded NOTE —The Sambhar Salt authorities now knew fully that such further interception was only possible in the Kishengarh area, as Ajmer area had already been heavily intercepted. It was intercepted as much as it could be for practical purposes and the further interception could only be done by Kishengarh. (ii) That some action should be taken to free the Rupnagar stream from some of its existing obstructions NOTE:—The recommendation was that Ararka tank in Ajmer (British territory) should be removed, which has not yet been done—in 1928!

In their letter No 3779, dated the 13th July, 1901, the Government of India (Finance and Commerce Department) wrote to the Agent to the Governor-General in Rajputana that: (a) The question of the flow of water into the Sambhar lake was one of grave concern to the Government of India. (b) In view of the way in which the manufacture of salt depends on a sufficient supply of water in the lake, and of the precariousness of the supply, the Government of India consider that it is most inadvisable that anything should be done in the shape of constructing new reservoirs, irrigation works, or of extending any existing works on any of the feeder streams of the lake, either in British territory or in Native States, which will be likely to diminish the supply. (c) A continuous record of observation should

be taken which will indicate more fully the extent to which the supply of water to the lake is being affected by the obstacles referred to by the Salt Commissioner. (d) The Government of India desired that in future the Commissioner, Salt, may be consulted before any of the existing works in British territory or in Native States are enlarged, strengthened or improved

Now, Sir, when that letter was written the Government knew quite well that all the works of interception of water that were practically possible had already been made and finished in the British District of Ajmer, and that the order in its practical effect would only apply to the Native States, namely, Kishengarh, and no other, for practical purposes, and in putting in that specious statement of an appearance of equality of treatment of British territory and Native States they knew quite well that the reality of the case was that they were dealing with a Native State only and not with British territory.

It is evident that the whole question of the water supply to Sambhar Lake was from this time onward dealt with by the Government of India exclusively from the point of view of the revenue interests of British India, as put forward by their Finance and Commerce Department and advised by the Salt authorities, and to the utter disregard of the interests of Kishengarh In arriving at a decision on such a momentous issue, involving the vital interests of the Kishengarh Durbar, the Government of India (Finance and Commerce Department) did not consult the Durbar, nor give them opportunity to show how those decisions would adversely affect Kishengarh interests. It seems that the Finance and Commerce Department of the Government of India did not even consult their Political Department, as the decision of the above policy did not emanate from the Department which dealt with the affairs of Indian States, but emanated from a Department which was interested in the revenue of British India. Will you kindly notice that very particularly, Sirs, because that is a complaint that is made by the States, that in the system which exists, in dealing with economic matters, the fate of the States is decided by the Economic Department and not by the Political Department.

As above shown, Ajmer had already successfully intercepted the drainage area of Rupnagar stream in its territory, without a word of protest or interference from the Salt Department or from the Government of India. But when, after the famine of 1899, Kishengarh Durbar, with a view to safeguarding their interests, began to mature irrigation schemes so as to utilise their own surface water, just as Ajmer had already done in its own area (in utter disregard of Kishengarh interests), the salt authorities came forward to claim Kishengarh water for their use and were successful in enlisting the support and authority of the Government of India in their cause.

Four irrigation projects estimated to cost about two lakhs of rupees and designed to irrigate about 10,000 bighas of land—that is 6,600 acres—were at this time before the Durbar, but their construction had, in consequence of the policy laid down by the Government of India and referred to above, to be postponed This was the period of minority administration in Kishengarh. Mr. Manners Smith, Superintending Engineer, Protective Irrigation Works in Rajputana, who was put on special duty by the Government of India to carry out a systematic survey of irrigation and protective works, recommended

these projects as of great value to Kishengarh, but the prohibitory orders and attitude of the Government came in the way

It was not that all the water of Rupnagar area which the salt authorities now commenced to appropriate to themselves was required for manufacturing that quantity of salt which was derived from the lake before the commencement of the lease, but for the future the availability of this water was ensured in order (i) To go on increasing the quantities of salt manufactured so as to derive for British India increased revenue from Excise Duty on salt, (ii) To ensure that during years of scanty rainfall, when supply of water from other sources failed, a steady source of supply such as Rupnagar may remain in hand, (iii) To save capital expenditure to the Treasury of British India in works, so as to economise the quantity of water required for the manufacture of salt.

The following facts prove those three points (i). (*a*) · Before the lease of the lake was taken by the British Government in 1870 the annual quantity of salt sold from the lake may be taken to have been not more than 17¼ lacs of maunds. Royalty is paid to Jodhpur and Jaipur Durbars under the Treaties, over quantity in excess of this amount (*b*) Between 1871 and 1891, during 20 years, the annual average of salt sold from Sambhar was about 26 lacs of maunds Over the 30 years of 1871 to 1901 it had risen to 31 lacs, and in the 10 years, 1891 to 1901, it had risen to 39 lacs. (c) The yearly sales, according to the published reports of Salt Department (Appendix IV, Column 14), from Sambhar were for the year 1921-22 66 lacs of maunds, and for the year 1922-3 nearly 66 lacs of maunds The inference is obvious that Rupnagar water is appropriated for increasing salt production at the lake, but thereby depriving Kishengarh of its use It may be added that in the year 1923 salt duty stood at Rs 2/8 per maund. Thus on 66 lacs of maunds the Government of India derived a revenue of one hundred and sixty-four lacs This mainly resulted from Kishengarh water, and yet the compensation that the Government, after much wrangling, gave to Kishengarh is only Rs 8000 per annum.

With regard to (ii) above, the statements made by Mr Ashton, Deputy Commissioner, Salt, Ajmer, before the Indian Irrigation Commission, 1901-2, are cited in support:—(*a*) Quotations from Mr. Ashton's statements made in reply to Questions 2, 8, 9 and 12, quoted above. (b) Question No. 31: "If you have a short rainfall, is that a reason why all the works should be stopped?" Answer · "Short rainfall absolutely stops the salt works, the bunds stop the whole water The dams high up on the branches do not do much harm, and we do not object to them." Here attention is drawn to the fact that the salt authorities had no objection to the dams high up on the branches lying in Ajmer territory. Their sole objective was the drainage water of Kishengarh Territory, which they usurped during the period of minority administration for their use.

With regard to (iii) above—that is the question of expenditure by the Government of India which they wanted to avoid—the following statements made by Mr. Ashton before the Indian Irrigation Commission are quoted: Question No 47: "Why is it necessary to allow the water to spread over 90 square miles?" That is the Lake area

"Do you require such a large area for your manufacture? Could you *not put a bund round to keep in water in a small area?*" Answer: "It would be a great expense to bund portions of the lake off to convey the available water into them." Question No. 46: "What I want to know is, when a limited supply is spread over 90 square miles and salt could be obtained from other places, why it is necessary to keep on the South-East works?" Answer: "There is an advantage in having a number of centres of distribution." Question No. 10: "Is not a great deal of its (Rupnagar river) water lost in a swamp?" Answer: "Yes, that is a point we are going to take up as soon as this particular question is settled."

Here is an admission by the Salt authorities that a great deal of Rupnagar water might be wasted in a swamp before entering the lake; but the question of Kishengarh being prevented from its use must be settled first, the object evidently being that, after securing Kishengarh water, the water waste in swamp would be taken in hand, so as to further enhance salt production.

With the affirmation by the Government of India (Finance and Commerce Department) of the principle that the lake supply must not be further intercepted or impeded, and the expression of their desire to the Honourable the Agent to the Governor-General in Rajputana that no new works be constructed and no existing works be enlarged, strengthened or improved, the Salt Authorities felt themselves enabled to take action that led to all the old irrigation works on the Rupnagar river in Kishengarh territory falling into disrepair. (*Vide* Mr. Ashton's evidence before the Indian Irrigation Commission, page 30, questions Nos 26 and 27). Question No. 26: "It seems to me that all the old works have been allowed to fall more or less into disrepair. In a time of short rainfall, however, when it is desired to repair them to what they originally were, you object?" Answer: "When they are repaired we suffer." Question No. 27: "You suffer, but you do not claim that you have the power to prevent them being repaired?" Answer: "We don't claim anything."

This power also which the Salt Authorities lacked for preventing *old works from being repaired was furnished under the authority of* the Government of India, who had written (No 3779 S.R. dated 13th July, 1901) to the Honourable the Agent to the Governor-General in Rajputana, in July, 1901, that it was their desire that the Salt Commissioner may be consulted before any of the existing works in British territory or in Native States are enlarged, strengthened or improved This desire of the Government of India was communicated to the Kishengarh Durbar by the Resident at Jaipur, in his No 4109, dated the 16th August, 1903, in the following words: "The undersigned has the honour to request, under instructions from the Honourable the Agent to the Governor-General in Rajputana, that in future the Commissioner, Northern India Salt Revenue, may invariably be consulted before any of the bunds on the feeder streams of the Sambhar Lake, in the Kishengarh State, are enlarged, strengthened or improved or altered in any way" The desire expressed by the Government of India became binding with the further addition that the old existing works were not even to be altered in any way by the Kishengarh Durbar without consulting the Salt Commissioner.

The following cases illustrate how, during the period of minority, the Salt Authorities appropriated the water rights of Kishengarh State (1) The carrying out of new tanks in Kishengarh which would have brought about 10,000 Bighas of land a year to the State (not to speak of the more important gain to the Jagirdars and cultivators from the greater produce of the land cultivated) was stopped under prohibition of the Government of India (Finance Department, No 3779, dated the 13th July, 1901). (2) Under letter No 3866, dated the 1st July, 1903, the Resident at Jaipur called for a report regarding the reconstruction of an old Bund at Kuchil breached in 1897 and repaired by the Durbar the same year The Resident in his letter No 1109, dated the 26th February, 1904, asked the Durbar to restrict the height of Kuchil Bund to that to which it was raised in 1900. (3) In 1903 a Kutcha village tank—that is an earthen dam tank—was constructed in the village of Chitakhera. It was not an irrigation work, but an embankment to help percolation in surrounding wells that had dried up during the last three or four years (*Vide* Kishengarh Council's letter No 2530, dated the 17th March, 1904, to the Resident at Jaipur.) The Resident asked the Kishengarh Council in his letter No. 1109, dated the 26th February, 1904, to remove the embankment, and in letter No 6025, dated 11th October, 1904, requested the Council to carry out the order regarding the removal of the above embankment, and report its compliance for the information of the Government of India, and the Council had to carry out this order by demolishing the said Bund (4) About a year after this the villagers at Chitakhera, faced with scarcity of water for their cattle, rebuilt the embankment on the same site, and the Resident in directing the Council (letter No 6037, dated the 23rd August, 1906) to remove it again called for an explanation from the Council as to how the Bund in question came to be reconstructed in the face of the orders of the Government directing its demolition. This was a year of severe drought, and the villagers in their anxiety to water their cattle, reconstructed this Bund without any reference to the Durbar (letter No 1187, dated the 12th November, 1906, from the Secretary, Council, Kishengarh State, to the Resident at Jaipur) This bund was not on the bed of the river, but far away from the river at the foot of a hill, but the Government authorities did not allow the villagers of Kishengarh the use of surface water even for watering cattle, and this Bund was demolished. Cases (3) and (4) are very striking (5) Yet another instance of the Salt Authorities objecting to the villagers making embankments at the foot of a hill to water their cattle is on record. (*Vide* the Reports of Government Salt Inspector, dated the 3rd March, 1905, and 9th July, 1905) The reason given for such an objection was that the embankment would to some extent prevent rain water from going to the ravine from the hill. (6) In February, 1906, the Kishengarh Durbar represented to the Resident at Jaipur (Letter No. 228, dated 22nd February, 1906) that they were desirous of (i) Building low masonry weirs across the river, almost flush with the surface, for helping percolation in adjoining wells (ii) Of sinking wells in the bed of the river for irrigation of fields on the banks, the bed of the Nullah being the only suitable place for obtaining a fairly good supply of water, and that these two schemes were calculated not to interfere with the surface flow of water in the bed of the river in which the Sambhar

Salt Authorities were interested. But the Commissioner, Northern India Salt Revenue (*vide* letter No. 933, dated the 30th April, 1906, to Resident, Jaipur) did not agree to No. (i) saying that such weirs would probably cause alterations in the natural bed of the river, and with regard to No. (ii) he permitted only the construction of temporary Katcha wells on the distinct understanding that any obstruction likely to be caused by these temporary wells in the free flow of water would be removed every year before the end of May. (Resident, Jaipur's D.O. letter No. 2438, dated the 31st March, 1906.) This was also tantamount to a refusal.

With regard to scheme No. (i), the proposed submerged weirs flush with the river bed, the Superintending Engineer, Rajputana, gave his opinion, on the Kishengarh Durbar's insisting upon professional advice being taken, that such weirs do benefit wells close at hand. (*Vide* Superintending Engineer, Rajputana's letter, No. 3572R, dated the 5th September, 1906, to the Political Agent at Jaipur). The above shows fully the attitude of the Sambhar Salt Authorities, who would not agree to any irrigation propositions calculated to be of benefit to Kishengarh and of harm to the Sambhar Lake, and in the face of such an attitude of the Sambhar Salt Authorities, the Government of India finally came to the conclusion that (*a*) if Tank Irrigation is extended in the Rupnagar Valley, the quantity of water reaching Sambhar Lake will be diminished in proportion to the extension. (*b*) Diminution of supply to the lower Rupnagar would lower spring level there and this would involve increased absorptions of the local rains which fall in this part of the basin and thus diminish the supply reaching the Sambhar Lake, and, guided by the above considerations, accepted the following recommendations by the Commissioner, Northern India Salt Revenue:—(i) That the observation of the discharges of the Rupnagar stream which have been carried out in accordance with the rules of 1901 will now be discontinued. (ii) That all irrigation works which were in existence in the catchment area of the Sambhar Lake at the time of issue of the orders of 1902 may be allowed to remain, and (iii) that before any work is constructed in the catchment area of Rupnagar or any of the existing works referred to in (ii) above is enlarged, strengthened or improved, either in British territory or the Kishengarh State, it should be ascertained from the Northern India Salt Revenue Department whether such work is likely to interfere with the flow of the water into the lake, and that if this effect is anticipated the work, though otherwise desirable, should be prohibited.

A representation was made by the Durbar to the Government of India (*vide* No 302, dated 23rd September, 1922, from Chief Member, Kishengarh, to the Resident at Jaipur). This representation pointed out: (i) The hardship entailed upon the Durbar who are required to obtain Salt Commissioner's permission for even repairing or altering an old existing work, which may have been damaged by heavy rainfall or otherwise standing in need of urgent repairs (ii) The evil effects produced by the arrangements which had been gradually brought into force and which not only prevented new works being constructed but also old works from being improved, strengthened or repaired. (iii) Ajmer tanks remained intact but salt authorities would not allow Kishengarh even to recoup losses. The revenue interests alike of Ajmer and Sambhar, being the common interest of the Government

of India, both were promoted. In consequence Kishengarh suffered a double injury inflicted upon it from south and north. (iv) Due to the land deteriorating, the State land revenue had fallen in the Rupnagar Pargana and a fertile and populated district had become desolate as the water level in wells had gone down and a large number of wells had fallen out of use. (v) The immense loss to Kishengarh could be gauged from the following facts that (*a*) in the case of only four Khalsa villages, land revenue which before 1897 was Rs. 70,561 a year had, in 1919, gone down to Rs 32,861, or a fall of Rs. 37,700 a year in only four villages of Khalsa (*b*) in 87 horse jagirs income had fallen from Rs. 21,100 to Rs. 15,700, or by Rs 5,400 a year. (*c*) Large areas of cultivated land had been turned into waste. (vi) A request was put forward to withdraw or modify the orders prohibiting irrigation works in the Rupnagar Valley. Whether construction of tanks in the Rupnagar area would affect the quantity of salt emptied into the lake by feeder streams, and how much minimum level of water could suffice for the manufacture of salt, were questions for the expert to decide. (vii) As regards loss to the Durbar from prohibiting the construction of four proposed irrigation works, details were given showing that those works were estimated to cost about 2½ lacs of Rupees, and to yield to the State an average income of Rs 45,750 (viii) The Durbar requested that the Government of India may be pleased to consider the representation sympathetically, and to do justice to their claims

The Durbar's representation with regard to the injustice done in this case and the losses suffered was ignored in subsequent correspondence, and the Resident thereafter merely dealt with the Durbar's proposal to carry out four tank projects in the catchment area of the Sambhar Lake, and their alternate claim for compensation for loss consequent upon the prohibition of the construction of the above four tanks In 1924 the Resident at Jaipur, by his letter No 1662/B-34 dated 5th April, 1924, informed the Durbar that the Government of India were prepared to consider the representation of the Kishengarh Durbar sympathetically. The Government of India thought it desirable that in the first instance the tank projects should be examined, and the estimates checked, by an Engineer with experience of the construction and maintenance of such works, and inquired if the Durbar would have objection to the proposed investigation, the object of which was to obtain exact information as to the compensation that might be payable by the Government of India to the Durbar The Durbar (No 167 dated 26th May, 1924) said they had no objection The Government of India nominated Mr Bijawat to examine the above projects On the 2nd June, 1925 (letter No 220C) the Resident informed the Durbar "*That the Government of India have, after careful* consideration of the report made by Mr Bijawat, executive Engineer, on the Kishengarh Durbar's claim for compensation for the loss of their water rights in the catchment area of the Sambhar Lake, now decided to fix the amount of compensation payable to the Kishengarh Durbar at Rs 8,000 per annum with effect from the beginning of the current financial year This amount, the Government of India add, is to be regarded as a payment in full satisfaction of the Durbar's claims, not only in respect of the four tank projects now in question, but also in respect of other parts of the catchment area of the Rupnagar Valley, in which it is conceivable that the Durbar might in future have

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desired to institute storage works. The expenditure involved will be a charge against the Northern India Salt Authorities."

You will find in fact that the representation of the Durbar has been dealt with by the Government of India in a manner as to (*a*) Side track the question of losses of account suffered by the Durbar in consequence of the several prohibitions specified above, namely, the loss of Land Revenue, the loss of yield, and, while the existing conditions continued, the desolation of a large part of their territories. Equally they suffered the double injury inflicted by Ajmer in the south and Salt Lake in the north, and (*b*) In a way which permanently deprives the Durbar of the water rights not merely in the catchment area of these four tanks, but of the water rights in the whole drainage area of Rupnagar in Kishengarh, which is 154 square miles, and nearly a quarter of the whole area of the Kishengarh State, which is 855 square miles. Their decision may, therefore, be finally interpreted to imply that they gave the State Rs. 7,000 to compensate the loss of irrigation revenue arising from the four tanks prohibited and Rs. 1,000 for the rest of the Durbar's water rights. That is how the Government then split it up. You can take it from me. It appears in a letter from the Government (No. 229C dated 29th June, 1925, from the Resident to the Chief Member of Council, Kishengarh)

Under Article 2 of the Treaty of 1818, the British Government engaged to guarantee protection to Kishengarh territory. It is true that the Government employed no troops to annex any of Kishengarh's territory, but the invasion committed by the Government upon the State's revenue interests for the sake of their own has resulted in a situation which calls for the protection of the State by the Government against themselves.

The Resident's letter communicating the decision of the Government referred to above was followed by his letter (No. 225C) dated 3rd June, 1925, in which he conveyed to the Durbar that he had been informed by the Government of India that the case had received very careful attention by them and that the Resident would be glad to explain to the Secretary of the Durbar the grounds of their award in detail on some suitable occasion. The Kishengarh Dewan verbally requested the Resident to be put in possession of the copies of notes and reports by advisers of the Government, which led the Government to come to their decision as to the amount of compensation payable to Kishengarh. The Resident in his letter (No. 229C) dated 29th June, 1925, informed the Durbar, under advice from the A.G.G. in Rajputana, that copies of the above notes and reports by advisers of Government could not be supplied to the Kishengarh Durbar without the permission of the Government. He also observed that the average rainfall for the last 20 years was 13.19 inches, and stated with reference to the splitting of the compensation: "Moreover, this figure allows a sum of Rs. 1,000 per annum for the water storage possibilities of the Rupnagar Valley in excess of the four tanks proposed."

On 10th October, 1925, the Government ask (Letter No. 7500 from the Resident, Jaipur): "With reference to the correspondence ending with my D.O. No. 229/C dated the 29th June, 1925, I write to inquire whether the Kishengarh Durbar accept the compensation of Rs. 8,000 a year offered by the Government of India." This is the answer to it, a very carefully considered answer, and it really sets out a tragic

case (No 249 dated 5th November, 1925). Would you kindly look at paragraph 3. After referring to the Report of the Government expert, Mr Bijawat, the Durbar says· "Not having had the opportunity of inspecting the report of Mr M C. Bijawat, and with such momentous issues involved, it was but natural that the Durbar should request to be supplied with a copy of that document Before submitting their representation they had obtained the best possible advice and the names of Sir Swinten Jacob, Messrs Manners Smith, Sandera and Hall, two of whom were irrigation experts, representing engineering talent which is entitled to respect. The wholesale condemnation or rejection of works approved and recommended by such authorities might in other circumstances have called for comment. But as the case has received adequate and careful treatment at the hands of the irrigation experts of the Government of India, the Durbar accept their conclusions without demur." It is dreadful to think that a Durbar of an independent State, and a full-powered State, can really be driven into having to write such a sentence as that in answer to the treatment such as it has received from the Government in the circumstances A little way on you will see: "Nevertheless the report of Mr. Bijawat and his recommendation on which the award of compensation offered by Government is ultimately based cannot cease to be of interest and instruction to the Durbar, and copies of such notes and reports of the superior advisers of Government on that Report as can be spared will always be a valuable record of abiding usefulness and guidance in the future engineering activities of the State. There can at the same time be no fear that documents which the Durbar ask for are ever likely to be put to a wrong use, and if the arguments unfolded in them bring conviction to the mind of the Durbar as much as they have satisfied the Imperial Government, the latter will have greater reason to be gratified that the acquiescence secured in their decision is not on trust but is the result of what is proved to be right and just I am, therefore, desired to request that the Government of India's permission might kindly be obtained to furnish the Durbar with copies of the Report of Mr. M. C. Bijawat and the notes and comments of the engineering experts who have helped the Government of India in fixing the compensation awarded to the Durbar in the present case." I ask your particular attention to paragraphs 6, 7 and 8. They say, in effect, that they have lost their water rights since the beginning of the century, and they ask that compensation should be paid for back years, at least to the year 1903

The answer from the Resident is dated the 16th June, 1926 (No. 1416/B.34) Paragraph 2 is: "In reply I am desired to say that the Honourable the Agent to the Governor-General considers that it would serve no useful purpose to supply the Durbar with copies of Mr. Bijawat's report, and of the notes and comments of the engineering experts, and the Government of India, to whom the contents of your letter were communicated, agree with this view." It is incredible! "As regards the second request, I am to say that the Kishengarh Durbar preferred their claim for compensation in respect of the four tank projects . . . only in the event of the Government of India not finding it possible to cancel or modify their order prohibiting the construction of the four tanks, and the Government of India are of opinion that the Darbar should be compensated in respect

of these four tanks with effect from the year 1922-23. The amount of compensation is estimated at Rs. 7,000 per annum, and the Government of India have accordingly decided that the Darbar should be given arrears of compensation for the three years 1922-23, 1923-24 and 1924-25." Then you get a perfectly dreadful letter of cringing humility which I cannot read (*No* 192, *dated* 19*th September*, 1926, *from the Chief* Member of Council, to the Resident at Jaipur).

Now the next case, Sir, is that of Cutch (page 1739). In 1876 the Rao was a minor, and the State was governed by a Council of Administration presided over by the Political Agent On the 25th of August, 1879 (No. 390), the Political Agent wrote to the Dewan of Cutch as follows—that is to say, the President of the Council wrote to the Dewan. "In obedience to instructions received from Government, I have the honour to inform you confidentially that His Excellency in Council has been pleased to decide on removing the preventive line . " The preventive line, if I remember rightly, ran, roughly speaking, between Rajputana and Cutch and the Kathiawar States. "It will therefore be necessary for the Council of Regency to obtain such a control over all the salt produced within or on the borders of Cutch as may effectually prevent it from being smuggled into the British districts, and injuring the British revenue by there underselling the *Kharaghora salt* "—*that is to say by the competition of the cheaper salt* from Cutch "The object which Government has in view is the relief of the public from the burden of a preventive line by measures which will not occasion any fiscal loss to the Cutch State. This being the case, His Excellency in Council looks to the Council of Regency to further his wishes in a spirit of cordial and active co operation towards a clearly understood result."

At that time the Ruler was a minor. The demand of the Government was made with a definite end in view, viz., the relief of the public from the burden of a preventive line by measures "which will not occasion any fiscal loss to the Cutch State." The Government wanted from the Cutch State "cordial and active co-operation towards a clearly understood result"

In continuation of this letter the Political Agent again wrote to the Dewan of Cutch on the 26th August, 1879 (No. 397) asking "for information as to the position and produce of the salt works existing in *and on the borders of Cutch and the amount of revenue (if any)* that has been derived from them by the Durbar or the Members of the Jarija Bharyad" It is difficult to see why, for the purpose mentioned, that information was wanted In his letter, No 448, dated 17th September, 1879, the Political Agent stated: "As you are aware that Mr. Carey" —who was the Salt Commissioner—"and I have, as the result of our frequent conferences with you, made every possible concession to the scruples of the Council of Regency, and every allowance for the local prejudices of the inhabitants of the Province, it is hardly necessary for me here to point out to you, for the information of the Council, that the Agreement now presented for the acceptance of the Government *of Cutch contains nothing* but what is absolutely necessary to enable Government to carry out the policy which has been decided upon" That shows that the Council of Regency were opposed to the proposals, and that the people of Cutch did not like them. The correspondence that took place later shows that the fears and dislikes

born of considerations of legitimate self-interest which the Political Agent describes as "scruples" and "prejudices" were well founded *The Political Agent admits as much as this when he speaks later on* of the "Concessions" which the Cutch Government are asked to make

At the end of every letter the Political Agent added that the matter was absolutely confidential and should on no account be divulged One would like to ask, Why? After all, this was a question which concerned the produce and export of salt of the State It concerned the public because, by the proposed prohibition of salt to British India, the export trade of Cutch was being curtailed It concerned the Government of Cutch because it meant a reduction in its revenue Why then should it be kept secret from the public? Why should not the matter be given wide publicity so that the views of the people proposed to be affected be fully elicited? To this letter of the Political Agent (No. 448, dated 17th September, 1879) was attached a draft of an agreement prepared by the Political Agent and Mr Carey, Collector of Salt Revenue. The chief features of this draft agreement were —(1) The Government of Cutch were to adopt effectual means to stop the exportation from Cutch, by land or sea, of salt manufactured or spontaneously produced in the Province (2) The Government of Cutch were to exercise efficient control over the manufacture and issue of salt, to open no new salt works without the consent of the British Government, and to suppress manufacture at unauthorised places (3) A British Establishment to supervise the arrangements of the State were to be admitted in Cutch and given every facility and assistance. (4) British servants posted in Cutch under the provisions of this agreement were to be under the Criminal Jurisdiction of the Agency Authorities and not the State. (5) The Government of Cutch to receive an annual definite sum as compensation (6) In the event of the measures adopted by Cutch under this agreement proving inefficient the British Government to take over full control. That is the gist of what was asked as an agreement. In reply the Dewan (No 489, dated 3rd October, 1879) sent a memorandum of the Meeting of the Council of Administration. It is a long memorandum of the Meeting of the Council, apart from the President, who was the Political Agent. It says · "It was resolved that the question should be discussed by a full Meeting of the Council, attended by all *its Members, and the requisite information in connection therewith* collected in the meantime, with every possible speed In accordance with this resolution the absent Members were requested to attend, and special officers, carefully selected, were deputed into the districts to collect all available information on the subject. While this was being done, Mr. Carey, the Collector of Salt Revenue, arrived at Bhuj. The Members of the Council of Regency have had frequent conferences with Major Reeves and Mr. Carey on the subject. The information obtained by the special officers above referred to has been placed at the disposal of Major Reeves and Mr. Carey, who have also examined the different specimens of salt produced in Cutch. The draft Agreement finally forwarded to Council for acceptance is hereto appended, with the transmitting letter from the Political Agent, No 448, dated 17th September, 1879 . . . The Members have unanimously come to the conclusion that they would not be justified in executing an Agreement like the one proposed by Major Reeves and Mr. Carey. They are, however, quite

ready and willing to do all in their power to prevent the smuggling of salt into British territory, and to adopt all preventive and remedial measures to secure this end." And they sent an Agreement forward by which they would achieve it, the last Clause of which was: "This Agreement to be in force during the minority . . ." Of course, the only proper condition of such an Agreement. And they actually offered, in Clause 5 of that draft, that the exportation of salt by sea to all British ports should also entirely cease, so that they were doing a very great deal of what they were asked Then the Political Agent, in answer (No. 37, dated 16th January, 1880), said: "I am directed to inform you that Government has been pleased to instruct me to carry out forthwith the salt arrangements for Cutch, proposed by Mr Carey and myself, as embodied in the enclosed draft Agreement which you and other Members of the Council of Regency refused to adopt." This can mean nothing but that the Government had decided to force the salt arrangements on the State of Cutch at a time when the Ruler was a minor, and when even the Council of Regency appointed by themselves had refused to accept these. In the second paragraph of his letter the Political Agent asked that a meeting of the Council be called to consult *as to the best means for giving effect to the wishes of the Government.* The Political Agent further asked the Dewan to "issue peremptory orders prohibiting the export of indigenous or manufactured salt from the territories under the jurisdiction of His Highness the Rao of Cutch by land or sea" Peremptory Order!

On the 19th January, 1880, the Council of Regency resolved upon this letter of the Political Agent. A memo of the proceedings was sent to the Political Agent by the Dewan (No. 35A). They say: "The members regret to find that before these final orders were issued, the privilege of having a personal interview with Government, which they had so earnestly applied for in the memo dated 1st October, 1879, was not accorded to them. Situated as the Members of the Council are, they have, under respectful protest, issued orders for carrying into effect the arrangements desired by the Government of Bombay. A humble representation on the subject, which the Members feel it their duty to submit in the interests of the State under their management, will follow shortly." A long correspondence about compensation to be given to Cutch State followed, in the details of which it is not necessary to enter In the course of correspondence the Dewan (16th March, 1880) sent a memo of the proceedings of the Council of Regency to the Political Agent. This memo in one place states categorically the losses likely to accrue to Cutch by the salt arrangements forced by Government on Cutch against the wishes of the people. It says: "The extinction of trade in salt will bring about the following results: (1) It will inflict a crushing blow on the poor salt traders of Cutch by the loss of their industry from which they will hardly be able to recover. (2) It will bring about the decline of the trade in pottery wares" because the salt was exported in earthen pottery made in Cutch. "(3) It will result in the decline and gradual extinction, to an appreciable degree, of the important trade of Cutch with Africa. (4) It will most adversely affect the shipping trade and all accessory industries in Cutch. (5) It will paralyse the ship-building trade in Cutch and the industries directly dependent upon it. (6) It will disorganize, to a certain extent, the

labour market by throwing upon it a number of idle hands, otherwise most usefully employed, and drive them to emigrate from Cutch in search of employment elsewhere" I believe there has been a very large emigration from Nawanagar through the fiscal measures imposed on Nawanagar.

Then on the 10th of March, 1882 (No 169), the Dewan of Cutch forwarded to the Political Agent a memorial numerously signed by the merchants, traders, and other people of the town of Mandvi, complaining of the great hardships inflicted on them by the restrictions imposed by the Council of Regency at the order of the British Government on the manufacture, sale, and exportation of salt from Cutch by sea. It is important to remember that in his first letter the Political Agent said that the arrangements proposed were for a clearly understood purpose —that purpose was to stop the smuggling of Cutch salt into British territory. For this purpose it was not at all necessary to stop the export of salt to non-British places and ports as well But we know that subsequently Cutch was required not to produce more salt than was necessary for consumption in Cutch itself All export of salt by land or sea was totally prohibited This had the result of killing the salt industry of Cutch without in any way benefitting British India This was a most iniquitous arrangement, the more so as it was forced on Cutch in spite of the protests of the Council of Regency This memorial was forwarded to the Government of Bombay for orders, who called upon the Collector of Salt Revenue, Poona, to report on the matter (No 2009, dated 25th March, 1882) This official submitted his report on the 21st September, 1882 (No 5170), in which he said that he strongly deprecated any relaxation of the rules then in force which prohibited the exportation from Cutch of any salt at all It is the Collector of Salt Revenue who decided the matter.

A concession of no value whatsoever was made after this report, i e., Cutch was asked to undertake to confine the export of salt to vessels of 300 tons burthen and upwards, sailing direct from Cutch ports to some specified ports, e g, Zanzibar, Mozambique, and the East Coast of Africa (*vide* Commissioner of Salt's No 6136, dated 25th September, 1882) The Dewan of Cutch thereupon informed the Political Agent (No 945, dated 22nd October, 1882) that this concession would be of no use to Cutch as the salt exported from Cutch to these places was usually in vessels of smaller burthen than 300 tons In paragraph 8 of this letter the Dewan requested that the Government be pleased to grant to Cutch the exemption contained in Section 8 of the Bombay Act, of 1879. He gave an assurance that his Government would see to it that salt taken for export to foreign lands was not smuggled into British India. The Political Agent (No 131, dated 24th October, 1882) forwarded this letter to the Government of Bombay with the remark:—"As there is undoubted hardship and one affecting considerably the limited trade of the Province, I respectfully urge for the favourable consideration of the Government the acceptance of the Council's request as set forth in paragraph 8 of the Dewan's letter." As a result the Government of India allowed the Government of Bombay to amend the existing rules in the manner proposed. The Government of India (No 1580, dated 26th February, 1883) concurred with the views of the Government of Bombay, the Political Agent, Cutch, and the Dewan of Cutch, that "this system may have had a

tendency to cripple the trade of Cutch and in this and other ways to cause some hardship to the people of the country."

On the 2nd May, 1883, the Political Agent, on behalf of the British Government, and the Political Agent, as President of the Council of Regency, along with the other members of the Council, signed a draft agreement restricting and regulating the production and export of salt from Cutch. This agreement was later on found by the Government to be defective in some respects and was amended and signed in the amended form on the 16th January, 1888.

This, in brief, is the story of the way in which the Government succeeded in making Cutch State agree to its salt policy. This policy was undertaken by the Government with the sole view of benefitting its own revenues. The States had only to lose by it But as the policy could not have been effectively enforced without the co-operation and sacrifice of interests by the States, they were by means such as those set out above forced to submit to it. Cutch was also a sufferer. That is the story of Cutch, Sir.

The next case is Porbandar (page 1849). Porbandar, as the Committee remember, is on the south side of the Kathiawar Peninsula, *with a good port. Demands were made upon Kathiawar by the Salt* Revenue Department in 1879; Mr Carey, Collector of Salt Revenue, Bombay, came to Rajkot and made two imperative demands of the State authorities:—1. That they should hand over to the British Government all control over Salt Works and resources wherever they may be, or 2. They should raise the price of salt to the level prevailing in British territories, and consent to the supervision and guidance of salt manufacture by Officers of the British Government. Not very much distinction between the two The Political Agent, Mr. Barton, joined forces with Mr. Carey, was present at the above interview, and brought his official influence to bear upon the Kathiawar States. The authorities of the States, however, were cognisant of the fact that the proposals of the British Government were fraught with grave political and economical issues and requested the Political Agent to supply copies of the correspondence that had passed between the Government of Bombay and the Agency regarding this question, but the Agency refused to supply the copies. The States were thus obliged to send a detailed telegram to the Government of Bombay in which they stated in brief the unfairness of the proposals which they had been called upon to accept. These exhibits are very interesting, Sir. I would like you just to look at them, if you would, in this case. Exhibit A (dated 9th September, 1879, to the Political Agent, Kathiawar). You see it is signed by six of the leading States (Junagadh, Nawanagar, Bhavnagar, Dhrangadhra, Porbandar and Morvi): "With reference to the verbal conversation we had with yourself and Mr. Carey, Collector of Salt Revenue, Bombay, and with reference to what we have said personally, we have the honour to state that we think it necessary to know the communication you may have received from Government in that behalf and have therefore the honour to request that you will be so good as to supply us with signed copies of all that correspondence." The answer (No 1169, dated 10th September, 1879) is: "With reference to Yadi, dated the 9th September, 1879, *from . . . they are informed that the Political* Agent could not give copies of the communications received from

Government. . . ." Exhibit C (telegram dated 11th September, 1879, to the Government of Bombay): "It is respectfully submitted on behalf of "—I think, all the Maritime States——

H.H. The Jam Sahib of Nawanagar: All the Maritime States.

Sir Leslie Scott: All the maritime salt producing States "Mr Carey, Collector of Salt Revenues, Bombay, came to Rajkot and made two requests of the nature of orders as under —1. That we should hand over to Government all the control of our brine pits wherever they may be, and our land which may be producing natural salt; 2 Or that we should raise the price of salt to the level at which it ruled in British territories, and that we should consent to Government Officers being appointed to guard and supervise our salt pits The Political Agent joined with Mr. Carey and pressed us to agree to either of the conditions We showed to the Political Agent and Mr. Carey an additional draft in regard to raising the rate of salt and strict Bandobast to prevent theft absolutely, but they did not accept even such an effective consent, and it appears that they are determined to compel us to accept the terms laid down by them Mr. Carey has shown want of confidence in us This is a matter of grave importance to our State interests. We are deeply astonished at the above terms because they militate against our sovereign and vested rights which we have been enjoying from remote times and for which we have received a guarantee from the British Government Even what we are prepared to agree will entail a great burden on the ryot of Kathiawar and therefore the ryot of Kathiawar will feel greatly distressed We therefore respectfully urge that Government will not pass any orders on the report which Mr. Carey or the Political Agent may make in this behalf to bring their intentions into effect, without supplying us with a copy of the report and without considering our reply in respect thereof."

Then that was followed up afterwards by another Yadi (dated 19th January, 1880) from the same States "In this connection, we would respectfully urge that we are having brine pits in our States from the remotest times, and salt thereof is being sold in our States and in the whole of Kathiawar; much salt is also exported by sea to outside market; and we enjoy the revenue and Jakat in virtue of our independent proprietorship Not only are our age-long rights to manufacture salt in our State and enjoy the sale proceeds destroyed by the terms offered, but it amounts to Government depriving us of, and appropriating to itself, a part of our jurisdiction We are therefore unable to agree to the views expressed by you. You are aware that in the Bandobast which Colonel Walker made as regards this Province in 1807-08, it is specifically agreed that only the fixed amount of tribute should be recovered from the States of Kathiawar and that nothing more should be levied. In spite of such a permanent Government guarantee for our Province, we deeply regret to learn the intentions of Government to deprive us of our immemorial rights to manufacture salt and enjoy the proceeds, the rights which have stood undisturbed even in the time of the Moghuls and the Mahrathas, the rights in the exercise of which even the British Government have not interfered for the last seventy-five years." Then, on the top of that, came the signing of the Agreement, 1883 (page 1853), and I ask your particular

attention to one or two aspects of that The Government did not give way at all "His Highness the Nawab Saheb of Junagad, recognising the rights of the Paramount Power . . ." This draft is a draft prepared by the British Government to which the States are compelled to attach their signature, and that recognition is a dictated recognition of a right which, in my submission, does not exist at all in this context Similar remarks apply as regards the next words: "and the duty incumbent on the Chiefs of Kathiawar so to regulate the production of salt in Kathiawar for the consumption of its inhabitants that no salt produced in Kathiawar may be conveyed into the British districts contrary to the law of British India and to the injury of the salt revenue of the British Government agrees as follows" My submission is that there is not a shadow of pretext of a ground for enunciating those two claims The Government had no such right and the Chiefs were under no such obligation. "(1) That the production of salt in his State, as hitherto carried on, will continue, but the quantity produced or removed shall not exceed the quantity required to meet the demand for consumption thereof within the Province of Kathiawar. (2) That the salt manufactured within his State shall be sea salt only, that is, salt made from sea-water or brine wells as heretofore. That no Vadagra salt shall be manufactured within his State. (3) That salt may only be exported from his State by sea to some other place in his own State, and then only under special arrangements made by his State, all removals of salt by sea by private individuals from one place to another being prohibited That fishing boats belonging to his State may ship, when leaving a place in his State, a quantity of salt not exceeding 25 maunds, to be used for *bona fide* fish-curing purposes That no salt shall be imported into his State by sea from places outside Kathiawar, *except salt which has paid the salt tax of the British* Government, and is covered by a British Parwana. (4) That his administration will be responsible for the observance of the above conditions by all classes of his subjects That he will prevent, to the utmost of his ability, the export of salt from Kathiawar by land, either into another foreign State or into British India. (5) That he will not enlarge or make any material change in the existing salt works, nor *open any new work or salt source in his State, nor permit any salt* work or source to be altered, enlarged or opened, without the previous consent of the Government of Bombay obtained through the Political Agent in Kathiawar" and (6) that the salt works shall be open to inspection.

Well, Sir, in 1899 a Petition was put forward by Porbandar—Exhibit "F"—(dated 18th November, 1899, to the Customs Collector, Porbandar): "I beg to request that it is my intention to export Porbandar salt to foreign countries. The salt is desired to be exported in large quantity in our own steamer which can carry two thousand tons, or in other manner according to our convenience. Kindly, *therefore, give permission to do so By exporting salt to Calcutta or* South Africa, the customs revenues will be benefitted, labour will get employment, and salt manufacturers will make good traffic. It will also look well for the port if such large quantities are exported from our port." *Then the reply (No. 4590, dated 11th December, 1899) is:* "The export of salt produced in Porbandar to any port of India or elsewhere is barred by agreement." Fancy calling that an agreement!

May I ask one question of His Highness the Jam Sahib, in connection with this salt matter? I should like him to tell you what his views are, from his knowledge, as to the kind of effect that these salt agreements have had upon, on the one hand, the revenues and employment of their States and, on the other, as to the demand of Bengal to-day for sea-borne salt His Highness, I know, is familiar with the whole subject.

H.H. the Jam Sahib of Nawanagar: I had a talk first with Sir George Clarke, afterwards Lord Sydenham, with regard to the export of salt from the States of Kathiawar, including Jamnagar The idea occurred to me because a good many of our surplus population were leaving the State for want of employment. All the States are very much handicapped in various ways, such as the delays in receiving sanction from Government to railway extension, and in other industrial enterprises within the States, because the credit of the States has been partially ruined by the doctrine of "life interest" introduced by the Bombay Government in respect of the States I was very keen that some kind of employment and industry should be added to the State by which we could keep some of the labouring classes from going away to Karachi, to Bombay, and to other places I told Lord Sydenham that safeguard could be given that the British Government in India would receive all the duty, whilst we would be given the benefit of retaining part of our population; they would earn wages and the State would make a certain profit—the difference between the cost of production and the sale price. And, I said, why should not the indigenous salt of India be given preference over the salt imported into India by French companies, by German companies, by Spain, and foreigners, who are likely to be enemies? He was very astonished to find that that was the case, and said he would give the matter his consideration Then came Lord Willingdon, to whom I spoke equally on the subject, and he expressed sympathy. I also spoke to Lord Chelmsford on the same matter, and he expressed surprise and said that if representation were made by the State through the proper channel—in those days it was the Bombay Government—the Government would reconsider the whole question. We did present our representation—to the Agent to the Governor. I do not think the answers received have been very satisfactory so far. Latterly the Baroda State has been given the right to export, and we hope that the same privilege will be accorded to the other States, provided we equally safeguard the Government interest, but the net result during the last 40 or 50 years of this policy of restriction to the States of Kathiawar, and particularly to Jamnagar, has been that we have probably lost by emigration to South Africa, to Karachi, to Bombay, to Nagpur, close upon 100,000 people of our State.

Sir Leslie Scott: Out of what?

H.H. the Jam Sahib of Nawanagar: Well, you see, agriculture will only support in Nawanagar, owing to its size, something like 400,000 people, and unless trade, commerce or industry are introduced sufficiently, one cannot possibly keep a population larger than that existing on agriculture. The same considerations apply to Ireland, which is losing its population; it is a country which is entirely agricultural, and until it introduces something more within its borders in the way of industry and commerce, it cannot keep its population.

Chairman: I am very much obliged to your Highness.

Sir Leslie Scott: His Highness of Cutch desires to add that he considers Cutch is in the same position as has been described by His Highness of Nawanagar in regard to Kathiawar, in respect to salt

H.H. the Jam Sahib of Nawanagar. May I just add one word?

Chairman: Yes

H.H. the Jam Sahib of Nawanagar: I should like to tell the Committee that the Cutch subjects who have gone to Bombay trade annually with Manchester alone to the extent of £17,000,000 sterling. The subjects of Nawanagar State who have emigrated into Bombay and are trading there have a trade of £13,000,000 sterling annually. So that our subjects have benefitted, by their emigration, the trade of Bombay. I have not got the Karachi figures, but if we were allowed to develop our ports, etc, one can imagine the extent to which we should benefit, having regard to these figures.

Minutes of the Evidence given before the Indian States Committee at Montagu House, Whitehall, S.W.1.

Monday, 12th November, 1928, at 3.30 p.m.

PRESENT.

SIR HARCOURT BUTLER, G C.S.I., G.C.I.E., *Chairman.*
Colonel The Honourable SIDNEY C. PEEL, D S O.
Professor W. S. HOLDSWORTH, K.C.
Lieutenant-Colonel G. D. OGILVIE, C.I.E , *Secretary.*

His Highness the MAHARAO of CUTCH.

The Right Honourable Sir LESLIE SCOTT, K.C., M.P., appeared on behalf of the Standing Committee of the Chamber of Princes

Sir Leslie Scott: The next case is that of Patiala (Page 1833) It is one of the salt cases; it is the last of the salt cases that I propose to deal with and I want to take it very shortly. Patiala had made no agreement about salt In 1904 there was a minority in Patiala, since the end of 1900. A man in Delhi was arrested with what was called "contraband salt" viz., salt that had never paid British Government Duty It was seized under the British Indian Act and it was found that the salt had come from the State of Patiala. That was made the occasion for starting a process of pressure upon Patiala, which was continued through a series of years, whereby Patiala was induced to forbid all export of salt and, in effect, to destroy its own salt industry. Patiala got nothing in return. If you look at Exhibit R. (Letter No 1701, dated 6th April, 1921, from the Political Agent, Phulkian States) you will find the heads of an agreement that was pressed upon the acceptance of Patiala and which Patiala did accept under pressure; (vide Letter No I.G. 174.C., dated 28th January, 1923, from the Secre-

tary to the Governor-General, Punjab States) Since then—that is January, 1923—no salt has been exported into British India, and the once flourishing trade of salt has altogether disappeared

My observations which I submit to the Committee are these Possession of the salt which has not paid British Indian duty in British India may be an offence there, but no offence is committed by the producer from whom that salt was obtained nor by the Government of the State whence it came, whether that State is an Indian State or a foreign country as, for instance, Italy or France The analogy, I submit, is complete with the case of contraband If contraband cargo is exported by a neutral to a belligerent and the other belligerent captures it it can be condemned, but no offence against that belligerent is committed by the country which has exported it nor by the person who has exported it. So here in regard to salt and other excisable goods in which there is a monopoly in India, the British Government in India may rigorously forbid and punish infractions of its Revenue Laws, but that does not entitle it to give any orders to the Indian States in respect of those matters That is all I want to say about salt

I now pass to opium under Head A (b) 2 The first case I want to take, Sir, under the head of Opium is Gwalior (page 1890) I do not propose to read it to you, Sirs, but may I commend to your notice the historical note which precedes the Gwalior case In Malwa the soil and climate were especially favourable to the cultivation of opium, and it was from these inland tracts that the opium for export mainly came to the Western Coast. The trade in Malwa opium was therefore regarded with jealousy and apprehension, as it was sure to lower the high price which the Government of India got for their opium (that is Bengal opium) from the merchants in Calcutta Accordingly, the measure introduced in 1803 of prohibiting the export of Malwa opium from the Bombay ports was enlarged in 1818 by shutting out the export from the whole of the Bombay coast No doubt Sindh was open, but the distance, the many intervening Native States, the difficult and circuitous routes, and consequent heavy transportation charges, were all to the Government of India's advantage Still, the competition was keen. To check this, Agreements and Treaties were proposed (1819-23) with the Maharaja Gaekwar, Maharaja Holkar and a number of other States, "limiting cultivation, prohibiting the sale of the drug and its transit through the States, and requiring it to be made over at a fixed price to the British Agent at Indore, who was to buy up the whole of the crop and to send it to Bombay for resale at a profit" In short, the policy of arrangements similar to those in Bengal was attempted. But the different States would not agree. I need not trouble you with the details Lord William Bentinck's Minute (Vol. IV, Part 1, para. 95) is worth reading "Impressed with this view of the subject and being quite unable to devise a middle course which affords the promise of satisfactory results, His Lordship in Council cannot avoid the conclusion that we are bound by consideration of justice and good faith to withdraw altogether from interference with the growth and transit of opium throughout Central India, confining our restrictions upon exportation to our own territories and to Kathiawar, Gujerat and Cutch, where the prohibition should still be maintained by the Bombay Government."

Consequently the monopoly in Western India was abandoned in 1829. In lieu of the monopoly a system was introduced both as a check on exports and a source of revenue by which passes were granted at a special rate of duty to cover the transit of opium through British territory to Bombay for export to China—the rate being fixed so as not to drive the opium to use circuitous routes through Native territory It was fixed, roughly speaking, at the estimated average additional cost of the overland transit by the circuitous route through Native territory. This transit duty was fixed low at from Rs 125 to Rs.175 per chest till by the annexation of Sindh in 1843 Malwa opium was finally cut off from all possible access to the sea except through British territory Between 1843 and 1860 the duty was gradually raised to Rs 600 per chest. Since then it has ranged between Rs 600 and Rs 700 per chest From 1843 the policy has been to impose as high a duty upon exported Malwa opium as possible, short of killing the trade

The opium trade of Gwalior was thus unrestricted, except for general disability inflicted under the pass system until 1878, when the Salt Agreement was negotiated by the Government of India with the Gwalior Durbar. *(Aitchison, Vol. IV, page 101.) In that agreement* restriction was adventitiously introduced (under Clause 6) on the export of opium along with hemp drugs. They tried it on Indore but could not get Indore to accept that I think Udaipur also did not accept it. The agreement was accepted by the Durbar, as the Maharaja was induced to follow the advice of the Agent to the Governor-General (letter dated 13th March, 1877) to place himself unreservedly in the hands of Lord Lytton, and he did and he had to accept that self-denying ordinance about opium

Then in 1895 (Resident's letter No 1340/783 dated 10th March 1895) the Government issued amended rules for the grant of opium passes whereby restriction was placed on the transit of opium from one Native State to another in Central India and Rajputana, passing through British territory. The next step was taken in 1900 when the Durbar were informed by the Resident (letter No. 1378 dated 2nd March, 1900) of the "measures which the Government of India desires should be adopted by Durbars to assist in the attainment of the object of Government." These measures were:—(1) Adoption of Regulations prohibiting the export of the drugs whether to other States or British territory except on passes granted by the authorities of the place to which it is conveyed (2) Requiring the prohibition of the import of the drug without passes. (3) Imposition of high rates of duty on imported opium. (4) Aid from the Durbar to any officers who might visit the State on duty in connection with the suppression of opium smuggling. (5) The removal of opium selling shops from the vicinity of the British borders. That is, roughly speaking, the history.

The sufferings from the previous restrictions had not been forgotten when another blow was dealt to Gwalior's trade in opium. The Resident communicated in 1908 (letter No. 3752/611-08 dated 13th June, 1908) that a convention had been concluded between His Majesty's Government and China and that as a result thereof it had been agreed that "a progressive decrease will be enforced for the next three years in the amount of opium exported from India beyond the seas." It was also conveyed that in 1908 only 46,800 chests of Bengal opium could

be sold and the export from India of Malwa opium had been restricted to 15,100 chests, which would probably be cut down to 13,600 chests in 1909 and 12,100 chests in 1910. The Durbar were further asked to publish the "above decision in the Gwalior Gazette."

Of course, the States were not consulted before that convention was signed and that limited the most valuable export trade, namely, the China trade, and it is important to bear in mind that as the quality of Malwa opium is generally regarded as much superior to that of Bengal opium, and particularly so in China, it fetched a very much higher price in China, soon after this, 1908, the Government, having introduced the restriction upon the export system, started a practice of auctioning the right to share in the limited quantity allowed to be exported, and ultimately very high prices were obtained by the Government on the sale of the licence by auction. The Government then introduced a rule imposing upon the States the obligation of accepting Bengal opium, and they were told they would not get any more Malwa opium, the result being, of course, indirectly that the Government got the benefit of the greater value for selling purposes in the China market of the Malwa opium in which the States did not share Broadly speaking, as I submitted to the Committee, this comment upon the whole of the opium policy of the Government of India is that whether the policy was morally commendable or not,—I am not disputing that, I am not disputing the desirability of checking the smoking of opium in particular—it was carried out by means of giving orders to the States and putting pressure upon the States, and in a way in which the financial interests of the States were sacrificed, and although the Government revenue by the monopoly of selling opium was greatly and progressively diminished, the wind was tempered to the Government's own shorn lamb to finance the Exchequer of the Government of India at the expense of the States That is, broadly speaking, the comment which the States desire you to bear in mind as their submission

The particular cases mentioned here are illustrations. If you turn to Exibit No 1 (page 1895) that is a letter dated 13th March, 1877, from Sir Henry Daly to the Maharaja Scindia, and the second paragraph indicates the attitude that was being pressed upon the States. "Suntoba has written explaining my advice in this question, which is that you should attach a short and simple statement to a Khureeta; the statement should have for consideration the points which you deem tell in your favour, the Khureeta should express your readiness to support the Government of India in any measure which it has at heart for the benefit of the country. That having stated the case as it affects Gwalior, knowing the good feeling towards Gwalior on the part of Government, you place yourself as regards compensation to be awarded and the system to be adopted unreservedly in the hands of the Viceroy, assuring him that you will give effect throughout your territory—without other aid—to whatever may be determined upon" That is sufficiently explicit

In another communication No 109, dated 30th April, 1910, the Durbar summed up their demands as follows: (1) That the pass duty should be abolished. (2) That a proportionate share of the non-China trade should be allotted to them In reply, the Resident (No 61/6-10 dated 30th September 1910) communicated that "as regards the claim of the Durbar to a proportionate share in the non-China markets

should the China market be closed, I am desired to inform the Durbar that the Government of India have no desire to close it, but it rests with the Malwa merchants to establish their footing before any question of sharing the trade can profitably be discussed." In another communication, dated the 20th September, 1911 (no reference quoted), the Resident informed the Durbar that "the Government of India have no objection to their selling their opium in markets other than China outside of India, etc."

But at the conference of the Central India and Rajputana States, held at Indore on the 13th November, 1911, the delegates were informed that Government had determined the total exports to be remitted from Bombay during the years in question (1912-13) and were prepared to allow the amount in question to be shipped either to China or to non-China ports, but not to allow any larger quantity of opium to leave Bombay. They were also informed that whether after the year 1913 the exports of Malwa opium would be permitted would apparently depend on whether it has by then proved itself capable of obtaining a footing in those markets. Another conference was held on the 6th December, 1911, at Delhi at which it was pointed out "that the non-China export market is distinctly limited (the exports having now been reduced to 13,000 chests) and that even if Malwa opium proves its ability to supply that market it cannot expect to be allowed to monopolise it" This will show how the position was being gradually worsened for the State, and after lengthy correspondence the climax was reached by the Resident's (No. 1344/25-56-13, dated 9th March 1915) referring the Durbar to a pronouncement by the Government of India which said: "The consumption of Malwa opium has now been discontinued in those Provinces of British India where it was formerly taken for Excise purposes, and such opium cannot go to *China where the importation of foreign opium is now completely discontinued.* It has also been finally decided that it is impracticable to offer facilities for the sale of Malwa opium *in other foreign markets.*" Thus has been closed Gwalior's chapter of foreign trade in opium at the arbitrary discretion of the Government of India.

Then the cultivation of the poppy for opium within their own territory was stopped As I understand—you are very much more familiar with that subject than I can be—it is recognised that some amount of opium eating, not smoking, is not illegitimate and is recognised by the Government, and that there is a genuine demand of a kind that the Government do not think it their duty to suppress for that purpose.

Chairman: It is for medicinal purposes largely the export now, and there are certain registered opium eaters in India, I believe, who *can be supplied with Government opium. Is not that so, Sir Manubhai Mehta?*

Sir Manubhai Mehta: Ghazipur and not Malwa opium was offered to consumers in Indian States.

Chairman. That is for medicinal purposes.

Sir Manubhai Mehta: For medical purposes.

Sir Leslie Scott; This is from the Resident (No 3522, dated 20th July, 1912): "On hearing from you that it (that is the cultivation)

has been totally suppressed in the adjacent parganas of the Gwalior State, I shall take corresponding action on the part of the States and estates named in the margin" The Durbar had to accede to the demand and intimated to the Resident (No 2887, dated 30th October, 1912): "That the Durbar have passed orders that out of the total number of 40 Tehsils in the whole State cultivation of opium be allowed only in four Tehsils" and it was finally stopped altogether

Then, Sir, there was the question of the disposal of the stocks of opium that had accumulated. Scientific investigation was made both by the Government and by the State as to the possibility of using these stocks to manufacture morphia for medical purposes and for the purpose of setting up a morphia factory in Gwalior, and they obtained the opinion of a great expert, Professor Dunstan He advised, after experimenting, that their opium might very well be used for that purpose. They accordingly said to the Government that they would like to do it and the Government forbade it in effect so that there again their financial interests suffered severely by an exercise of arbitrary authority which, to use a legal expression, in my submission, was wholly *ultra vires*, the Government had no right to impose that order. The letters that were written, I submit, are very reasonable. Would you just look at a couple of these on pages 1919, 1916 and 1917?

Chairman The action was taken, I think, in pursuance of the policy adopted by the League of Nations, was it not?

Sir Leslie Scott I do not think so, as regards the manufacturing for medical purposes, Sir, as regards the general suppression or very rigid limitation of the opium cultivation in India, yes

Chairman: No, this was before the League of Nations came in

Colonel Peel It was to help the Chinese

Sir Leslie Scott: It was an International movement which led to the Convention of 1908 direct with China You see under Exhibit 21 a letter dated 17th February, 1915, from Mr Cox, the Excise Commissioner for Central India, to the Commissioner of Customs and Excise, Gwalior State Paragraph 4 "Your wisest course would, I think, be to take no action in the matter until the Government of India have completed their inquiries regarding the suitability of Indian opium for the European and American markets"—That is for the production of alkaloids, manufacturing them for medical purposes—" But if the Durbar desire to pursue independent inquiries, they will shortly have an opportunity of consulting Professor Dunstan, when he visits Gwalior. In that case Government will expect that any opinion that the Professor gives to the Durbar should also be communicated to them, because he has been conducting investigations on behalf of Government, and his advice to the Durbar would necessarily be based in part on knowledge acquired by him in the course of these investigations" Here is a letter (dated 29th May, 1915, to the Commissioner of Customs and Excise, Gwalior State) from Professor Dunstan (Exhibit No 22) He states that the results are quite satisfactory, provided that that standard can be maintained "If the usual composition is that of the present samples, this opium would be quite satisfactory for the profitable extraction of alkaloids,

agreement? I should have called your attention to clause 2, sub-clause 7, where there is a proviso that the Raja will forthwith "introduce and enforce in his territory the regulations published under Government Resolution in the Revenue Department, No 7207, dated 18th September, 1895." The Raja had never seen that Resolution and did not know its contents. This is the letter which he wrote to the Political Agent, Exhibit V-c (No 52, dated 9th August, 1895): "I have the honour to state that I see no necessity to renew the present opium agreement" By "renew" he means "alter." "If, however, it be necessary to change the rate only, I have no objection." That was the length of period for which it was to run. "But as to the substance, the following are the grave objections: (1) The clause regarding the *cultivation of poppy and manufacture of opium ought to stand where* it is in the present agreement" Then (3) is· "Clause 7 of the draft should remain as it is (Clause 8) in the present agreement and I should like to have a copy of the Government Resolution in the Revenue Department (No 4472 of the 3rd June, 1883) before saying more in the matter. (4) The proviso in paragraph 3 of the draft is entirely against my interest and ought to be omitted. (5) The new agreement ought to be for a specific term and not to be binding on heirs and successors."

Exhibit V-d is another letter (No 24, dated 24th February, 1897) pressing the same thing a year and a half later. He had not signed it yet "I would ask for the favour of reconsideration of the proviso As I see the proviso, Government can at any future date discontinue the grant of the refund of one-fifth of the duty which is allowed at present, and as this would involve the loss of about a rupee a pound of opium consumed in my State, I have thought it right to make this representation in the hope that the Government will be pleased to take it into their favourable consideration I shall be obliged by your furnishing me with a copy of the Government Resolution in the Revenue Department, No. 4472, dated 3rd June, 1883" He had not got it yet, although that is eighteen months later.

Then (No 51, dated 21st April, 1897) comes another request from him again asking for the omission of the proviso, and he says: "On the spirit of this Resolution"—that is Resolution No 1382/51, (Confidential), Revenue Department, dated 17th March, 1880—"paragraph 3 of the existing agreement relating to refund of duty was drafted, but in spite of my hearty co-operation with the British Government in preventing the illicit import of opium in my State and fulfilling the conditions on which the said privilege has been granted to my State, *the new draft contains a proviso*" which he objected to. Exhibit V-f (No 74, dated 30th January, 1897, from the Political Agent) is a most considerate and carefully reasoned explanation which I am sure ought to satisfy any reasonable man, and I will read it:—"I have the honour to inform you, under instructions from Government, that they cannot modify the opium agreement as desired by you in letter No 52, dated 9th August, 1895, and to request that you will assent to the agreement already proposed without further delay." He was requested to sign it at once. Then (letter No. 170, dated 3rd March, 1897) the Agent refuses to make any further reference to the Government, and again asks him to sign it at once, saying that no alteration can be made Then (letter No 359, dated 6th May, 1897) you get this· "I should be sorry to be compelled to report to Government that

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during the middle of the last century, and a new system was introduced His Highness the Rao bitterly complained against the new system and asked for its abolition or relaxation. Finally, in 1842, he said he would not buy any of the Sirkar's opium. The matter was then represented to the Government by Major Le Grand Jacob (letter No 54, dated 7th May, 1853), who became subsequently Major-General Jacob This is very important He advocated a revival of *the arrangement sanctioned in 1823, under which merchants were to* be permitted annually to import 400 maunds of opium direct from Malwa. He argued that this permission had been lost sight of by previous Residents through some mistake. Then, if you would kindly turn to Exhibit 2, from the Government of India to the Government of Bombay, No 542, dated 12th May, 1854, you will see this: "It appears that the Rao of Cutch is not permitted to import opium for the internal consumption of his territories direct from Malwa, but is compelled to obtain the required supply by way of Bombay, Ahmedabad and Kathiawar. This necessity for procuring the supply by the above-mentioned circuitous channels so increases the cost of the Government article as to create a motive for smuggling too strong to be resisted." Then they quote Major Le Grand Jacob, and say: "It is clearly shown that those engagements"—those were the engagements of 1823—"were entered into on the distinct understanding that every facility should be given to the importation of opium for internal consumption, and that all that was required of the Cutch Government was to prevent its exportation . . . . There seems to be no objection to a return to the understanding formerly sanctioned and long acted upon in correction of the erroneous practice which has sprung up Indeed, it seems only just to the Cutch Government, even though the British *Government* should make no count of its own loss by the smuggling engendered by the present system, that that Government should not be made to suffer in its own revenue by reason of its co-operation in protecting ours" If that admirable principle had always been acted upon by the Government of India in regard to all States, probably your Inquiry would have been unnecessary. That was in 1854. For 20 years everything went all right. On the 9th October, 1874, Major Goodfellow, the then Political Agent, wrote to the Opium Agent at Indore asking him to let the bearer of the letter have 100 maunds of opium for transfer to Bhuj on the Rao's account. The Deputy Opium Agent would not act upon that, and (letter No. 884, dated 17th October, 1874) sent the letter to the Commissioner of Opium at Bombay. He submitted it (letter No 2217, dated 21st October, 1874) for the orders of the Bombay Government and reported that he had no authority to send opium free of duty to Cutch. They had always had it free of duty until then These papers were forwarded by Government for the report of the Collector of Salt Revenues, and by Government Resolution (Revenue Department) No 5934, dated 12th November, 1874, the Commissioner of Customs was ordered to supply the quantity of opium applied for only on payment of pass duty by the Rao With reference to this Resolution, the Political Agent in Cutch addressed the Government (No. 185, dated 5th December, 1874) as follows: "The Rao declines to pay the pass duty, and further His Highness considers that if the old agreement between himself and the British Government

for the supply of opium to Cutch be broken by Government, that agreement should now be considered as cancelled and both the parties to it absolved from the obligations under it . . . The records of this Agency show that the Rao possesses a prescriptive right to purchase annually at Indore and import thence direct for Cutch home consumption 400 maunds of opium free of pass duty"

The Collector of Salt Revenue then made a report stating the facts, and the report was forwarded by Government to the Political Agent, who sent it to the Dewan with his letter No. 399, dated 5th October, 1876, when again the State was being managed by a Council of Regency. The remarks of the Dewan were forwarded to the Government of Bombay (Political Agent's letter No 40, dated 2nd March, 1877) and you will see that the Political Agent strongly supported the views of the Durbar, asking for freedom and referring to the long practice of importing free of duty, saying that the concession granted by the State—that is to the Government—was a very valuable one and the Government probably had considered it worth their while to forego the Pass Duty Then the Political Agent quoted the following, from the minute of the Hon Mr Reid, dated 21st September, 1848 "We have no right to expect that, in order to uphold a system from which we derive an enormous revenue, they (Native States) will subject themselves or their people to loss or inconvenience without receiving from us a reasonable compensation If we require their co-operation, we must be prepared to pay them what it is worth" Again an admirable sentiment! Mr. Pritchard (Collector of Salt Revenue) did not agree. He ignored the report of Major Le Grand Jacob, and the Government of Bombay took the view that the duty must be paid (*vide* Political Department Resolution No 4071, dated 19th July, 1877). The Political Agent in forwarding this Resolution (letter dated 20th May, 1878) informed the Dewan (1) That the Government would allow a refund of 20 per cent only. (2) That it had further been ruled by Government that neither poppy cultivation nor the production of opium will be permitted in Cutch, and (3) That the orders of the Government on this subject were final, and no further discussion would be allowed You observe there they tried to pass the thing off by making the small concession of 20 per cent reduction They enunciated the ruling of the Government forbidding the cultivation of the poppy and the production of opium, and no further discussion would be allowed. Those were the orders of the Government I very respectfully submit that the whole thing is hopelessly and radically wrong.

Then, the Council of Regency—it was still a minority—lost no time in preparing an elaborate and extremely well reasoned representation on the subject, and submitting it to the Political Agent for being forwarded to the Government. The Political Agent declined to do so, on the grounds mentioned above He would not send it forward. Then it was submitted direct to the Government of Bombay on the 3rd August, 1878, but they refused to alter their decision. Seventeen years later the Rao submitted a Memorial to the Secretary of State, and, at the same time apparently, the Political Agent consulted the Government of Bombay, for he wrote to the Dewan (letter No 353, dated 27th February, 1896): "I have the honour to state, by the

direction of Government, that the Memorial has been withheld" under the Memorial Rules because it is out of time.

In 1907 a representation was submitted by the Rao to the Government of Bombay and that, too, was turned down. The Government's reply to this was conveyed by the Political Agent on the 14th October, 1913 (No. 1281), which is six years later. Then the Durbar asked the Political Agent to furnish them with the grounds on which the Government had declined to admit their claim. In reply the State was informed (letter No. 926, dated 20th July, 1915) that the main point for decision in the question was whether, in accepting the offer of the Cutch Durbar in 1820, the Government gave an undertaking, express or implied, to supply opium, pass duty free.—I should have thought it was quite plain on the interpretation—He pointed out that there was no such stipulation in the Government's letter of acceptance, nor could any such intention be inferred from it

Colonel Peel: It was not quite plain originally whether it was duty free or not. That is the point, is not it?

Sir Leslie Scott: It was not expressed. What I meant by that submission was that if nothing was said about it, having regard to the circumstances in which Cutch was making a large sacrifice in order to oblige the Government, as the Government did not ask for it on the ordinary principle of interpretation, *contra proprientem*, but left it open, you must imply they were entitled to buy without duty, because you must bear in mind the Government had no right to tax the State. That is the reason why I very respectfully submitted that as a mere question of interpretation it was plainly duty free; and then you have got that borne out by fifty years practice. From then till 1874 it was always supplied duty free.

Colonel Peel: With the interval of which you spoke?

Sir Leslie Scott: I am much obliged; that was a slip of mine I should have said with the interval which I mentioned, but Le Grand Jacob took that view very clearly, and he was a man who had immense experience of administration He was a very remarkable man. Then would you mind turning for a moment to Exhibit 10 (letter No 926, dated 20th July, 1915, from the Political Agent to the Dewan) because it is rather a significant document. I will read paragraph 3: "In making its opium arrangements with Native States in this Presidency, the British Government has acted in virtue of its powers as paramount authority, and the States were bound to accept its decisions; what was arranged in 1820 was not a bilateral undertaking between two free contracting parties as was the case to a limited extent with the opium-producing States of Central India and Rajputana. Under the monopoly agreements with the latter the British Government secured the whole of the opium for export, and Cutch and other Bombay States could not obtain any opium at all except through the British Government or by smuggling. It was in order to secure the co-operation of the States in the prevention of smuggling that special terms have been conceded to them, and the value of the concessions granted could quite properly vary with the value of the co-operation to be received Thus Government were and are perfectly justified in giving a larger concession to the frontier

Guzerat States than to others, and any argument based only on parity of treatment is without force It was a geographical accident that Cutch and the Kathiawar States were so situated that their co-operation was less valuable to Government than that of the frontier Guzerat States and that the concessions granted to them were also less valuable." That is the paramount theory pushed to a very extreme limit. That is the Cutch case, but what I would like you to bear in mind is that the question raised by Colonel Peel as to what was the meaning of the original arrangement was essentially a justiciable question, and that in the result the Judge that decided it was a party to the case, the Government of India, they gave the decision and Cutch could not dispute it. That is just the type of case which the States submit ought always to be dealt with as a matter of course by an impartial judicial court, excluding from such procedure, of course, all questions of policy, for which I, on behalf of the States, concede that a judicial arbitration or adjudication is quite unsuitable.

Chairman Are not all the cases very much the same as regards opium?

Sir Leslie Scott Yes If you would just pass on to page 1957, Patiala, that is a case I very respectfully submit is of an extraordinarily instructive character, but it would take me some time to go through it. Would the Committee be so good as to read the whole of that Patiala case rather carefully?

Chairman. Yes

Sir Leslie Scott: I give you an assurance, as Counsel, that you will find it will repay careful reading I will just make one or two comments on it. This case contains several minority cases which come under A (a) vii; it also illustrates A (a) xix, Breaches of agreements His Highness' Government contend: (i) That His Highness' Government have always readily and fully co-operated with the Government of India in the suppression of improper traffic in opium, (ii) That in pursuance of the policy of the Government of India, and occasionally under pressure and threat, they have carried out the following measures —(a) Suppression of illicit traffic in opium from Malwa and Nepal, and prohibition of the import of Nepal opium into the Patiala State (b) Prohibition of the import of Malwa opium into Patiala State. (c) Prohibition of the cultivation and manufacture of opium in the Patiala State. (d) Prohibition of boiling of opium before sale (e) Prohibition of the import of hill opium (iii) That as a result of this full and unstinted co-operation with the Government of India and of the measures adopted in pursuance thereof, His Highness' Government have suffered huge economic losses The total of the years 1910 to 1926 of the losses of duty, apart from other losses, incurred by Patiala State, represent about 11½ lakhs. Perhaps it would be convenient for the two non-Indian members of the Committee to note that one chest of Bengal opium equals 1½ maunds, and one chest of Malwa opium equals 1¾ maunds.

The gist of the whole of this case *quoad* breach of agreement with the Government, not *quoad* abuse of paramountcy powers or excess of paramountcy powers is on page 1958 under the head "Digest of the Evidence." In the year 1889 the Punjab Government for the first time

realised that they could not stop the smuggling of illicit opium from Nepal and Malwa into the Punjab without the aid and co-operation of the Punjab States. In order to secure this help and co-operation from the Patiala States, 74 chests of duty-free Malwa opium were allotted to Patiala State with the following announcement and condition, (Punjab Government letter No. 267, dated 27th November, 1889):—" The Indian States of the Punjab would be on exactly the same footing as regards the import of the Malwa opium as the districts subject to British rule, provided they co-operate in suppressing illicit traffic in opium." That footing of equality was the essence of the promise.

Now will you kindly turn to Exhibit C, Political Agent's letter No. 1773, dated 3rd September, 1907, just at the time when the Opium Convention with China was under negotiation, which is a critical moment The Political Agent writes: " I am directed to inform you that the Government of India have decided that the supply of opium for consumption in the Punjab, including Native States, shall, with effect from 1st April, 1908, be drawn mainly from the Bengal Opium Agencies, the supply from Malwa being discontinued from the same date It is contemplated that the arrangements under which Native States in the Punjab at present receive the whole of the duty on Malwa opium, which they are permitted to import on condition that they will co-operate in the repression of smuggling, shall be extended on the same terms as regards duty on an equivalent amount of Bengal excise opium " Now that decision by the Government of India applied to all the States; the Government got complete control of the Malwa opium, which is the opium which commands the extra good price in the market, and put upon the Native States the inferior opium of which the Government had the complete monopoly.

Chairman: There have been two Committees, have there not, recently about this Malwa opium?

Secretary: Yes, Sir, there was one only last year.

Chairman: There was one of which my brother was President, I think.

Secretary: That was some time ago. One was finished only last April I do not think the Report is out yet.

Chairman: With what question was that particularly dealing?

Secretary: The question of ending cultivation of opium in the States, and arranging for the States to obtain all their opium from Ghazipur.

Chairman: That was to be done after consultation with the States?

Secretary: Absolutely; the Committee went round to every State; there was no question of compulsion. We were only trying to show them the advantage of this opium arrangement.

Sir Leslie Scott: I understand, Sir, that the only States that were asked to co-operate in that last Committee—Colonel Ogilvie will tell me—were those States that were growing opium

Secretary. All Rajputana and Central India and Baroda, but not the others; I do not quite know why.

Sir Leslie Scott: Patiala had completely stopped the production of opium under the pressure that is indicated in this case in the evidence.

Secretary: I think it was all the States that were using Malwa opium

Sir Leslie Scott: His Highness of Cutch tells me he was not asked to send a representative, nor was Patiala.

Secretary: I do not know the details

Sir Leslie Scott: But you appreciate, Sir, that from my point of view the interest of these opium cases is as throwing light upon a system?

Chairman: Yes

Sir Leslie Scott Exhibit A (letter No 267, dated 27th November, 1889), from the Government of the Punjab to Patiala, paragraph 4· "It will be seen from the extract from the Government of India letter referred to in paragraph 2 above (Financial Department No 4037, dated 5th August, 1889) that the Governor-General in Council has desired that it may be explained to Your Highness that the concession now sanctioned will be withdrawn if the authorities of the State should fail to co-operate in suppressing illicit traffic in opium and, in conveying this intimation, the Lieutenant-Governor desires to remind Your Highness that the State has now a strong interest in the prevention of smuggling, for in proportion as the supply of opium from illicit sources is shut off, the demand for licit opium, and the duty receivable by the State thereon, will increase." That is the offer that was made in 1889. Then the whole subsequent course of events discloses a succession of constrictions of the supply allowed to the State duty free and also on payment

Chairman That was in pursuance of a policy decided on by the House of Commons as against the interests, as it was thought at the time, of the Government of India and India

Sir Leslie Scott, I am carefully making no comment on the policy one way or the other For the purpose of my submission here it may be assumed that the policy was right Then I do not think I need deal any further with this case

Under Head A (b) 3 I will take the Patiala Excise case first (page 2021). This case of Patiala has particularly to do with charas That is a drug which is produced from hemp, it comes from Central Asia and is stored in a Government warehouse at Hoshiarpur where the Government insist upon the whole imports of that article being put into their hands They thereupon charge an excise duty in regard to all quantities of the drug allowed to be sold from the store at Hoshiarpur, they having the monopoly That is perfectly right as regards British Indian purchasers, it is a mere excise duty, but they do the same as regards the States or some of the States—possibly all; and the States submit that that is wrong, that if it goes into the warehouse at one door and comes out at the other door straight from Central Asia to the State and the Government impose a duty upon it as it leaves the warehouse, that is obviously a transit duty and nothing but a transit duty On the principle that excise duty should be paid where the consumption takes place, the duty ought to be paid not to the Government of India but to the Government of the State where

the charas is consumed. So that two principles they say are transgressed: one that there should be no transit duties, and, two that duty should follow consumption. As you are aware, great pressure was put upon all the States in the earlier and middle parts of the last century to abolish transit duties, and they nearly all of them did: the Government made a great flourish about doing the same in British territory for the sake of freeing commerce from unnecessary trammels That was a very sound policy.

Patiala, in order to abolish transit duty, made a sacrifice of Rs 90,000 a year, and went further and gave up a particular form of customs duty involving a sacrifice of another Rs.45,000 a year. The Government of India derive from Patiala on its annual consumption of charas and other commodities Rs 124,000 a year, which is really from the levy of transit duties So that you get the contrast: Patiala made a sacrifice of the best part of 1½ lakhs, and the Government gains 1¼ lakhs. That is the kind of thing which the States say is unfair. Negotiations have been going on for 20 years between His Highness' *Government and the Government of India for the refund of these* duties on charas, bhang and English wines. The question was raised in 1909 and the Foreign Minister's letter No. 112, dated 21st February, 1910, to the Political Agent, embodied various arguments. They particularly rely on the statement of policy of the Government that the Native States of the Punjab should be on exactly the same footing as regards the import of excise articles as the districts subject to the British rule are.

In 1923 there was an Excise Board formed for the Punjab. It consisted of representatives of the Punjab Government and of various States Patiala was one member of the Board. At its initial meeting on the 18th December, 1923, the following resolution was passed: "The Board agreed that the general principle that taxation should *follow consumption* should be applied to States as well as to Provinces" Thereupon, quite naturally, Patiala at once shot in a letter (No 411, dated 17th June, 1924) to the Government of India saying: What about charas? In reply the Secretary to the Agent to the Governor-General (letter No. 3G. 3943-4-5-22, dated 23rd July, 1924) stated that the question of the acceptance of the principle that taxation should follow consumption was still under discussion with the Government of India. Then he was asked again (No 1136, dated 13th October, 1924) to get a reply out of the Government. This letter drew attention to the fact that the Secretary to the A.G.G. had not even attempted to deal with the question of rebate, and repeated the contention that the duty so far realised by the Punjab Government from Patiala State contractors on charas and bhang consumed in Patiala State should be credited to the Patiala State, inasmuch as charas is imported from Yarkand and is only temporarily warehoused in Hoshiarpur godowns, from where it is supplied to different contractors, and that the duty realised on this article by the Punjab Government from Patiala State contractors is nothing else than transit duty. Then they could not get anything out, so they asked for a conference (letter No 178, dated 11th May, 1925, to the Secretary to the A.G.G) The Secretary to the A G G did not countenance the idea of holding a conference. and got out of it (letter No 3G. 247.C-4-5-22, dated 17th May, 1925).

The gist of it is that Patiala has never had any satisfaction at all. Patiala feels it very deeply; they have made tremendous sacrifices which, in fact, drew at the time from the Government of India a Notification No. 282, dated 5th February, 1847, in the Government Gazette (Exhibit A), expressing the view of the Government for the self-sacrifice of Patiala in the matter, and they feel they have had no reciprocity from Government in treatment The history of this case illustrates a very real grievance felt by His Highness' Government, resulting in an annual loss of about one lac and 24 thousand rupees to the State The Government of India do not feel inclined to change their policy and insist on levying the duty, although as shown in the foregoing it belongs to His Highness' Government by right.

I want to read a sentence from the letter No 3G. 247C 4-5-22, dated 17th May, 1925, from the Secretary to the A G G (Exhibit O) "I am to observe that the principle of taxing articles imported from outside the limits of British India, whether by land or sea, has no connection whatever with the internal transit duties which were abolished in 1847, and further that to apply the principle of taxation following consumption to the abolition of all customs duties would mean that the Imperial Government would have to sacrifice the whole of one of its most important sources of revenue, either to Provincial Governments or to Indian States" You see how the general principles enunciated by the Government of India are subject to the exigencies of financial pressure.

Chairman: The first part of that sentence lays down the principle that taxing articles imported from outside the limits of British India, whether by land or sea, has no connection whatever with the internal transit duties Do you question that?

Sir Leslie Scott: No, I agree with that, Sir I think that is right If I may just make this comment It was in the case either of Indore or Gwalior under A (a) ii a that I drew attention to the confusion made by the Government of India between transit duties and customs duties They were objecting to the State levying the State customs duties on the ground that they were transit duties and I said that that was a confusion, the two were quite separate Your question leads me respectfully to make this observation You follow why I am suggesting that the charas duty was a mere transit duty? It is because it was simply charged on the charas as it came from Central Asia into the State. It did not profess to be a customs duty at all If it merely came through the warehouse, in at one door and out at the other, straight to the State, the duty was charged

Chairman. The point is this, is it not? There is no customs duty on charas coming across the frontier

Sir Leslie Scott No.

Chairman There is no duty imposed on charas until it is collected at Hoshiarpur, and there it is an excise duty levied at Hoshiarpur for the purpose of excise policy.

Sir Leslie Scott Quite. it is not customs, it is excise pure and simple

Chairman. It is for the excise revenue. It is treated like intoxicants.

Sir Leslie Scott: Exactly It is not customs duty. It is quite a separate thing and it has never been treated as customs.

Chairman: It is treated just the same as country liquor or spirit, which has to pay stillhead duty like the duty on whisky in England.

Sir Leslie Scott: Yes, and a rather convenient test is available because the Bombay Government refund the whole of the excise duty on charas to the States in the Bombay Presidency, except one-fourteenth, which they deduct as the cost of handling, simply in payment of services rendered. Thirteen-fourteenths are refunded.

Chairman: In the case of Punjab liquor going into Patiala State, that would have paid duty at stillhead. Have Patiala claimed that they should get the stillhead duty on liquor that comes into Patiala from British India?

Sir Leslie Scott: On bhang they do

Mr. Rushbrook Williams: There is a reciprocal arrangement about that. If the liquor is imported for the use of the State officially, it does not pay any British excise. A good deal of the liquor which is distributed by the State contractors has, of recent years, been produced in Cawnpore and it runs into the State in bond from British India, paying no British India stillhead or other duty.

Colonel Haksar: Instead of having a separate stillhead of their own, certain States have agreed to import liquor from British India You will remember that liquor is issued to certain smaller States in sealed barrels; no duty is paid to British India, on the same principle, because the liquor is going to be consumed by the subjects of the State; therefore the State is held to be entitled to collect it.

Chairman: In that case the manufacturers of British India are regarded as manufacturers for the States

Colonel Haksar: Yes, I suppose it amounts to that.

Chairman: Charas comes down through Kashmir, does it not?

Sir Leslie Scott: Yes.

Chairman: As soon as it gets down to British India the possession of charas is an offence under law, unless you have paid the duty.

Sir Leslie Scott: I believe, Sir, it is a flower that only grows in the Yarkand District of Central Asia.

Chairman: Yes, it grows all over the place wild Bhang grows on the north-west frontier.

Colonel Haksar: Bhang grows in Central India, and in the Indore State they have the Sanawad depôt for bhang, where there is a bit of country, the soil of which is particularly suitable for growing bhang and ganja

Colonel Peel: I still do not quite see the difference between this excise and customs It seems to me you would have the same result if, instead of charging excise, you charged customs on the charas.

Mr Rushbrook Williams: The charas does not pay customs in Kashmir when it goes through in bond If it breaks bulk it pays customs.

Colonel Peel: Kashmir has its own arrangements

Mr. Rushbrook Williams: Yes, but it all goes through Kashmir, every ounce of charas

Colonel Peel: Supposing the Government of British India chose to say instead of paying excise you shall pay customs? If they chose to impose a customs duty instead of excise it would be the same thing

Mr. Rushbrook Williams: The Government of India has never chosen to impose a customs duty The excise is imposed by the Provincial Governments, and the Provincial Governments, except the Government of the Punjab, so recognise the inequality of imposing excise on articles which are not being consumed by their population that they make a refund, retaining only a fractional amount for warehousing and handling.

Chairman: The Punjab Government, it was stated to us—not in evidence—sends the charas to the United Provinces Government free of excise. Is that so?

Colonel Haksar: I could not tell you

Mr. Rushbrook Williams And also to Bombay, but they do not apply that same policy to the States

Colonel Peel The object of my question was to emphasise that it was an excise imposed by a Provincial Government and not by the Government of India

Mr Rushbrook Williams An appeal was made to the Government of India, who thereupon replied that it was a matter for the Government of the Punjab to settle The matter was submitted to the Provincial Government, who replied that unfortunately the revenue derived from the excise duty on charas was part of the Meston Settlement and an integral part of Provincial revenues, and so could not be surrendered

Sir Leslie Scott I do not wish to be pushed into the position of saying that we are treated any worse by the Government of India than by the Provincial Governments, or *vice versa*

May I draw your attention to two letters—Exhibits R and S? The A G G writes (No 2G 885C 4 5-22, dated 24th August, 1926) "With reference to your letter No 338/C, dated the 6th February, 1926, on the above subject, I am directed to inform you that the Financial Commissioner, Punjab, has intimated that the rule that taxation should follow consumption is really only a working arrangement which has been adopted by various Provinces of India, and as such it may be treated as a means for facilitating and simplifying accounts procedure It cannot be accepted as a principle which should govern the financial relations between the Punjab and an Indian State" The answer (No 1252, dated 9th November, 1926) to that, Sir, is important. It is from Professor Rushbrook Williams "I am directed by His Highness' Government to draw the attention of the Agent to the Governor-General to the fact that the principle summarised in the formula that 'taxation should follow consumption' was long ago accepted by the Punjab Excise Board, of which the Punjab Government and His Highness' Government are constituent members Further, if the information at the disposal of His Highness' Government is correct,

this principle has been accepted by the Government of India itself as one which should shape Excise policy throughout the whole of India. In these circumstances, His Highness' Government much regret that they are unable to understand the intimation of the Financial Commissioner that this principle is to be treated merely as means for facilitating and simplifying accounts procedure The representatives of the Punjab Government, in successive meetings of the Excise Board, have pressed for the recognition of this principle as the foundation-stone of all Excise policy. In these circumstances, I am directed by His Highness' Government to ask you if you would be so good as to convey their request to the Agent to the Governor-General that he would refer the whole case to the Government of India Meanwhile, His Highness' Government would be much obliged if they could be given the opportunity of examining the reasons urged by the Financial Commissioner, Punjab, for denying validity to a principle which is universally accepted throughout India." And the answer (No 2G 293 4-5-22, dated 17th January, 1927) is that the matter is under the consideration of the Government of India, "and that it will be some time before a decision can be arrived at." We have heard from Professor Rushbrook Williams what the position is now.

Would you now turn to the case of Baghat (page 1991)? Baghat is one of the Simla Hill States May I, before you look at it, tell you what the case is, without reading anything? It is very short but rather complicated In 1869 the State was under a minority and the Superintendent of Hill States was administering the State. I particularly want those facts understood. A brewery was started at Kasauli in 1868—there was still a minority—and a brewery was started at Solon, the capital of the State, by an English company in 1877, and a distillery was also started at Solon by this company. From that date to the present, excise duty and Brewers' licence fees have been exacted from this company by the Punjab Government. The State of Baghat says: "The Punjab Government have got no right to this duty; it belongs to the State of Baghat, pay it back" And the Government of the Punjab refuse and the Government of India refuse, and the short position which I submit in law is this The administration was carried on by the Punjab Government, during a minority, as the representative of the State of Baghat When they imposed the duty in the first instance on the output and collected the licence fees for the Brewers' licence, they were doing so not in the interest of the Punjab Government but in the interest of and for and on behalf of the State, and I very respectfully submit that that must be the position to-day. Either the Punjab Government or the Government of India have set up various contentions They have said, for instance, that a great part of the beer and the spirit made within the State is exported outside the State to British India, and they have not said so in terms but they have implied that Baghat, at any rate, has no right to collect duty on the quantity exported into British India because excise should follow consumption, and the excise is not the customs, as Colonel Peel put it. But Baghat has not even got the whole of that The whole has been collected by the Government and kept by the Government That is the case Just look at one or two of the Exhibits

Chairman: Can you throw any light on this point, Professor Rushbrook Williams? I do not know if you have the information, Sir

Leslie It has occurred to me whether the Solon Brewery is in the Solon Cantonment, and, if so, is the Solon Cantonment one of those cantonments which are enclaves of British India in Indian States?

Mr Rushbrook Williams: May I answer that question categorically, as that part of the world is rather familiar to me? Solon Brewery stands on State territory, and is well outside the limits of Solon Cantonment.

Chairman: I know where it is, just by the Railway Station.

Mr. Rushbrook Williams: Well outside the Cantonment

Sir Leslie Scott: I have forgotten to bring the Punjab Excise Manual, but it says in terms that both the distillery and the brewery are in Baghat State territory, I will let you have it to-morrow, I have got it at home

Chairman: That is a point that occurred to me It would have come out in the correspondence if it had been in British India

Sir Leslie Scott There was a short memorial sent in on the 13th September, 1923, which contains all the facts Paragraph 5 "That the conditions of the Sanad (dated 18th July, 1864) were faithfully fulfilled by your humble memorialist's father, Rana Daleep Singh, C I E, who was most loyal to the British Government, and in the year the Government was gracious enough to give up its rights to the tribute mentioned in Article I, in consideration of some land given by your humble memorialist's father to the British Government for Cantonments at Solon and Kasauli 6 That during the War your Excellency's humble memorialist offered his personal services and placed the resources of the Baghat State at the disposal of the British Government."—The Rana died in 1911 —" 9 That during the minority of your Excellency's humble memorialist the Baghat State was taken under the superintendency of the Superintendent of the Simla Hill States"—That was the second minority. It was during the minority of his father that the Breweries were erected He attained majority in 1922 and was duly installed by the Government —" 12 That in Baghat State there are two Breweries, one at Solon and the other at Kasauli, owned by Messrs Dyer, Meaking & Co, which are making enormous profits. 13 That in the year 1881 the land for the erection of said Breweries was leased to Messrs. Dyer, Meaking & Co, by Your Excellency's humble memorialist's father, Rana Daleep Singh, C I E, the sole proprietor of Baghat State 14 That since the working of the said two Breweries about 40 years ago Your Excellency's Government has been realising from Messrs Dyer, Meaking & Co., about 2 Lacs (Rs 2,00,000) a year as excise duty 15 That under the Sanad which was graciously granted by the Benign British Government to Your Excellency's humble memorialist's father, there are no limitations or restrictions on the manner of enjoyment of the internal management of the said Baghat State"—It is a full powered State inside —" 16. That Your Excellency's humble memorialist can adopt such means of developing and increasing the revenue of the State as may most legitimately be opened to him 17 That there is large British Cantonment at Kasauli and Solon within Baghat State 18 That Solon is growing rapidly and Your Excellency's humble memorialist is anxious

to introduce certain measures of developments and improve the existing conditions of the Hospital, School, Bazaar and specially sanitation, which will greatly add to the happiness of his subjects, entrusted to his care by the Benign British Government, but is greatly handicapped for want of capital. 19. That with these objects in view Your Excellency's humble memorialist wanted to levy octroi duty on the proprietors of the said Breweries, but they objected on the ground that they were already paying excise duty to Your Excellency's Government 20. That Your Excellency's humble memorialist, as the sole proprietor of the State within which the said Breweries are situated, is entitled to the whole of the amount realised by Your Excellency's Government 21. That Your Excellency's humble memorialist respectfully begs to bring to Your Excellency's kind notice that Your Excellency's Government has no right to levy any tax or charge any duty within the said Baghat State, nor has it any jurisdiction to extend its Excise Department beyond its own Province, the Excise Act being wholly inapplicable to Baghat State. 22. That the amount realised by Your Excellency's Government from the said Breweries is negligible in comparison with its enormous revenues, and its loss will not in any way affect Your Excellency's Government, while it is of such vital importance to Your Excellency's humble memorialist." That is the gist of that.

Chairman: The important thing there, I take it, from your point of view, Sir Leslie, is Exhibit 4, is it not? (Letter No. 224E, dated 30th September, 1924, from the Deputy Commissioner, Delhi, to the Chief of Baghat State)

Sir Leslie Scott: Yes, Sir That was turned down and he submitted a memorial to the Governor-General (dated 22nd January, 1925) and in paragraph 9, after referring to the Punjab Government's letter, which is not set out "Your Memorialist submits that this was not the question at issue The British Government have realised during these years the Brewerage fee from the two distilleries situate within your Memorialist's territory to which to your Memorialist, as the Ruling Sovereign, was alone entitled; they did not realise these duties as import duties. That as such, your Memorialist is clearly entitled to the whole sum realised by the British Government. If they wish to realise import duty in addition to the Brewerage fee leviable by and payable to your Memorialist, they are welcome to do so, but they cannot refuse payment of this amount to which your Memorialist is entitled." Then the Superintendent of Hill States writes, Exhibit 6 (No 41, dated 5th January, 1927): "With reference to your letter No. 85/S, dated the 5th August, 1926, I am directed by the Punjab Government to communicate to you the orders of the Government of India in the Foreign and Political Department in connection with your notice to station a State Excise Inspector at the Solon Brewery and Distillery and to levy stillhead duty on all spirit manufactured in the State"—There are about six reasons given in his next paragraph As he did not get one good one, apparently he thought he would like to have a good many.—"As the proceeds of the Breweries are mainly intended for consumption in British India, it is within the discretion of the British Government to make excise duty on production in order to obviate the risk of smuggling. Such arrangement is a matter for the British

authorities and the Brewery Management and does not concern the Baghat State, except in respect of liquor destined for consumption within that State There has been so far no State law or regulation justifying the collection by the State of any duty on the production as opposed to the consumption of liquor. Nor is any such duty provided for in the agreement between Messrs Dyer, Meaking & Co, and the Baghat State, governing the construction of the Solon Brewery in 1877 So far as country liquor is concerned "—that is liquor made from flowers and that sort of thing, not beer or spirit—" all duty on such liquor issued for consumption in the Baghat State has always been credited to the State by the Punjab Government under existing arrangements "—It is very important to notice that—" As regards beer and other liquor, there appears to be no such consumption in the State except within Cantonment limits where the State has no claim, since full jurisdiction has been ceded to the British Government." Now, Sir, I believe all those reasons to be wrong

Colonel Peel. I am trying to see some reasoning in the affair There might have been some agreement between the Brewers and the Punjab Government that their beer was to be allowed to be imported into the Punjab on payment of an excise duty

Sir Leslie Scott There might have been

Colonel Peel· And so far as I can see there is nothing to prevent the State authorities from taxing the brewers themselves, if they like

Sir Leslie Scott: We tried to and we were forbidden by the Government of India to do it. The first paragraph of that letter from the Superintendent of Hill States which I have just read (No 41, dated 5th January, 1927). " orders of the Government of India in the Foreign and Political Department in connection with your notice to station a State Excise Inspector at the Solon Brewery and Distillery and to levy stillhead duty on all spirit manufactured in the State."

Colonel Peel I did not notice that

Sir Leslie Scott We were forbidden to do it We tried to do that. There are two very interesting points about paragraph 2 Firstly, just consider that statement that the duty on country liquor is credited to the Baghat State, that is to say, that the Punjab Government recognise that that duty is the property of the Baghat State Why? Because they treat the duty as having been imposed by the State Now, if that duty was imposed by the State the other duty was equally imposed by the State, and it is not open to the Government of the Punjab in one case or the other to say that when they were acting as Agent for the State, administering the State during the minority when these duties were imposed, it was not the act of the State that did it That is the first point The second point is this They say that no duty is provided for in the agreement. Well, I do not know that that has anything really to do with the case, but assuming that it had and that it would have made a difference if the agreement provided for a duty, who settled the agreement? The Punjab Government when they were there during the minority. They made the agreement with the Brewery Company, acting for and on behalf of this State, and it ought to have contained the clause It was the Punjab Government's duty to put it in There is an

allegation in the second sentence that it is not the concern of the Baghat State, and that it is within the discretion of the British Government to impose excise duty inside a Native State. Obviously they are wrong. Well, that is the case, and my submission is that as a matter of right the duty belonged to the State of Baghat, the whole of it, whether the barrelage or the bottles in respect of which it was collected were consumed within the State or exported outside it. I am perfectly prepared to concede that in regard to the quantity which was exported outside it, the Government of India might have said "At the Frontier we shall impose our own duty" and that might have prevented its being exported; or they might have said to Baghat State "Now be reasonable in these matters; let us follow the principle that duty shall follow consumption. You have the duty on what is consumed inside the State, and give us the duty on what is consumed outside Baghat State." If they had agreed to do that, it might have been done, but, as things stand, they did not do one or the other; they have simply taken money which belonged to the Baghat State and put it in their own pocket, and my submission is that there is absolutely no justification for it, and, when you see the contrast between the statements of policy about consumption and duty in this case and the Patiala case, I venture to submit that no conclusion is possible except that where revenue questions are concerned these general principles, these general propositions, are exposed to some risks.

The next case, Sir, is Bhor (page 1098)—an instance to show how the Durbar was compelled by the Political Agent to delegate to the Collector of Poona powers to order confiscation under Section 85 of the Bombay Abkari Act, of 1878 In the year 1878 the Bombay Government enacted Act V of 1878 to regulate its Abkari administration. It appears that in order to increase its own Abkari revenue, the Government requested as many States in the Bombay Presidency as were willing to assimilate their system of Abkari administration with the system in force in the British territories by leasing their Abkari rights to the British Government. Bhor was one of them Bhor agreed to lease its Abkari rights But either no written agreement was made, or it has not been included in *Aitchison's treaties.*

In 1885 Bhor entered into an agreement with the Government, Aitchison, Volume VII, page 185, for continuing the farm of the Abkari revenue of the Bhor State to the British Government until the 31st July, 1894. Would you be so good as just to look at that agreement, because a little turns upon the proper interpretation of the first two sections? Article 1: "With a view to assimilating the system of Abkari administration in the Bhor State to the system in force in the adjoining British districts of Poona, Satara and Kolaba and thereby preventing loss to the revenue from Abkari as well in the said State as in the said British districts, the Pant Sachiv agrees that the law from time to time in force in the said British districts regarding Abkari shall also have force so far as may be in the Bhor State."—That, I submit, means with such adaptations as may be reasonably necessary to convert it into Bhor State legislation — Article 2: "In furtherance of the same object the Pant Sachiv agrees to continue the farm of the Abkari revenue of the Bhor State to the

British Government . . ." Then, Sir, Article 6. "All offences against the said Abkari law and rules committed in the Bhor State shall be cognizable by the ordinary Criminal Courts of the State.' Article 8: "On the expiry of the term of the said farm on the 1st August, one thousand eight hundred and ninety-four, the administration of the Abkari revenue of the Bhor State shall revert to the Pant Sachiv, but the Pant Sachiv agrees that on and after the said date (a) the same Abkari law and rules which are in force in the adjoining British districts of Poona, Satara and Kolaba shall be maintained in the State. (b) The rates of taxation of liquor in the State shall be the same as in the aforesaid British districts (c) Nothing in this Article shall be deemed to require the Pant Sachiv to make any arrangement injurious to the legitimate interests of the Bhor State."

Now that is the agreement and this is what happened. Some difficulties having arisen about the Abkari administration in some States (other than Bhor), the Political Agent, Poona, in his letter No. Pol./379, dated 30th August, 1891, wrote to the Chief of Bhor as follows "I have, therefore, to ask you to declare the Abkari Act as the law of your State, and that you will then be so good as to inform me, as Political Agent, that the Collector of Poona is appointed by you to exercise the power of a Collector for the purposes of the Act" To this the Chief of Bhor replied (No 138, dated 27th August, 1891) as follows, Exhibit B "Act V of 1878 has been introduced into the State as the Abkari Act of the Bhor State, and that under Section 55 of that Act all confiscations are adjudged by myself as Collector, and under Section 6, Clause 2, the State invests any subordinate officer as and when necessary with the requisite powers In the agreement dated the 24th November, 1885, by which the Abkari rights of the State are leased to Government, Article 6 empowers the Criminal Courts of this State to decide all cases regarding offences against the Abkari Act. It will thus be seen that if the declaration and appointment be made as you have asked, I fear it would be contrary to the provisions in the agreement, and would lead to lessen the jurisdiction of this State." Exhibit C (No Pol /394, dated 2nd September, 1891) was a wholly irrelevant answer, but on the 13th September, 1891, (Exhibit D), in his letter No 140, the Chief of Bhor gave an assurance, or rather offered an assurance, that he would consult the Collector of Poona on the matter of commitments, but this did not satisfy the Political Agent who wrote (No Pol./1409, dated 15th September, 1891) that his letter was in accordance with instructions from Government which are meant to apply to all Native States with whom there is an Abkari Agreement In a further letter (No Pol /77, dated 15th February, 1892) from the Political Agent at Poona the Chief of Bhor is asked to inform him that "The Collector of Poona is appointed by you to exercise the powers of a Collector for the purposes of the Abkari Act of 1878 Unless I receive a reply by the end of this month I shall be compelled to report to Government your neglect to make the concession, which is a pure formality asked for." After further pressure had been applied he agreed

Well, Sir, for the Chief of the State to give up the jurisdiction which he was exercising and to hand it over to the Collector of Poona was not a pure formality, if it was going to be acted upon, and it is perfectly plain that it was intended to be acted upon,

and it was not fair to say to him that it was a pure formality, and to talk about reporting him for neglect. There is no more; that is the gist of it. It is a small case, but it shows how, when an Agreement of this kind is made, there is always a risk of it being abused, Sir, and the true terms of it disregarded.

Gwalior (page 2005) I only want you to glance through that one page. This is another Charas case. This brings out the fact that the income derived from Charas in British India is treated as Provincial, and not as a central revenue, and consequently the receipts are taken, not by the State, but by the Province; the Provincial Government exercising their own separate discretion in the matter. I think that is enough said upon that

Kishengarh (page 2015). It will not be necessary to read any of the Exhibits here. Apparently there is a practice, in regard to excise matters, of preventing States from having liquor shops within three miles of their frontier. It is a three-mile zone rule. That was applied to Kishengarh, but, as you remember from the map of Kishengarh, which you saw in connection with the salt question, the southern half of the State is a long tongue of territory, which is very narrow, and if you take three miles off from each frontier there is nothing left in the middle for a considerable distance. Secondly, Sir, this case illustrates the fact that the British Government are always asking for co-operation from the States, but as the States say, do not reciprocate Thirdly, that although general principles may often be wisely expressed from the point of view of general policy, their application to States, without consideration of local circumstances, may create very grave hardships Take, for instance, this simple question of excise liquors, and the principle of insisting upon States charging the same prices and the same rates of duty as in British India. *Primâ facie*, that is a very reasonable thing to do, because it is the only way of preventing a motive for smuggling. But, broadly, the *per capita* purchasing power in British India is considerably higher than it is in the States. Therefore, automatically, the power of the population of the States to indulge in what are luxuries perhaps, is in fact less than it is in British India If the States were left to themselves they might very likely be able to sell the excise liquors at a lower figure than in British India, which would be more reasonable from the point of view of the purchasing power of their population. Of course, the causes are obvious There is less volume of trade in the States, and there is less industrial development

That disposes of all the excise cases that I think it is necessary to go through here. But you understand that does not mean that the cases that are in the volume that I have not read are not interesting, because they are.

The next subject, A (*b*) 4 (page 2039), is "Customs, Transit-Duties, etc." The general question of Sea Customs is dealt with in the introductory memorandum that you have had. You will get from that little statement of Baud State an aspect of these questions which is often lost sight of Transit duties are prohibited according to clause vii of the Sanads—that is the Sanad of 1864, etc.—thus curtailing the powers this State enjoyed before, while duties on Tariff and Customs fall directly on the State subjects without any reciprocal advantage. Baud State, being on the main route from Ganjam and other parts

of South India to Central and Northern India, formerly used to make a large income from transit duties from merchandise passing along that route at one pice per rupee of value. This is a great loss to the State, and hampers its development That is a very simple statement of a very indirect result that has followed from an act which was voluntary on the part of the States, in the sense that that right was one that the Government could not rightfully compel the States to give up. The Government persuaded it in various ways to do it, some of them quite voluntary, but that is the present position.

Then the Cutch case (page 2039) is the next that I am going to take. In 1925, the Secretary to the A G.G. (no reference or date quoted) forwarded to the Cutch Durbar a notification of the Government of India whereby they prohibited the bringing by land of all liquors into British India from Cutch. Then the Secretary to the A.G G wrote again to the Durbar (No. L/P.G. 579/22/0-25, dated 17th September, 1925) that: "It has been brought to the notice of the A G G. that there are grounds for suspicion that matches, cigarettes and sugar are being imported from the Cutch State into the Tharparkar district and to request that a list may kindly be furnished showing the names of those who have imported by land any of these prohibited articles during the last half of January and subsequent months, together with a statement of the quantity imported and the addresses of the importers if known" The request was repeated (No C.10. dated 5th April, 1926) The Dewan replied (21st September, 1926) that "from enquiries it appears that cigarettes and sugar have not been imported from Cutch to the Tharparkar district" A list was sent giving the names of those who had exported matches The Durbar also assured the A G G that they had "taken steps to give full publicity to the orders issued by the Government of India prohibiting the import by land of certain articles into British India."

The comments of the State are. 1. Though the Durbar, in their helplessness, submitted to the fiat of the Government of India, the question remains how far this restriction on the trade of the Durbar territories is just. The crux of the whole question is well put by His Highness the Maharao in his letter, dated 25th Sptember, 1926, to the A G G, which says "Although the levy of a duty on the goods referred to at the place of entry by land into British India, in order to equalise the duty leviable at British Indian ports, is intelligible, it is difficult to understand why an absolute prohibiton has been placed against the entry of the goods by land from Cutch The imposition of such an absolute prohibition would not appear to be fair to the merchants and trade of Cutch" How far is this policy in accord with the abolition of the transit duties which the Government of India persuaded the Indian States to effectuate in 1879 2 Assuming that British India was entitled within its frontier to prohibit the entry of goods from Cutch, or to impose customs duties, could it give orders to Cutch not to export? It is submitted not A *fortiori* it could not extend to Cutch territory the British India Sea Customs Act That puts in there the point we had before This is a question of manners and methods. Would you just glance at Exhibit 4 (letter No C.10, dated 5th April, 1926, from the Secretary to the A G G.) This is an illustration of the pressure that is, in my submission, improperly exercised: "The A G G finds it difficult to interpret the silence of

the Cutch Durbar on this matter. The A.G.G. would be glad to have some indication that my predecessor's letter (dated 17th September, 1925) and his reminder to you (dated 2nd December, 1925) have not been ignored. The A.G.G. desires me to point out that it would be distressing if allegations were made in the Legislative Assembly, or otherwise ventilated in British India, containing insinuations against the Cutch Durbar, which, for the lack of information, he would be unable to refute."

Kashmir (page 2042).

Before I deal with this case, would you kindly turn to a letter on page 2104, in another case; this is a letter (No. 1975, dated 6th May, 1922) from the Resident in Kashmir to the Kashmir Council. In the middle of the second paragraph you get a sentence which I want to read: "A considerable part of the trade of Kashmir is carried in postal parcels" That sentence is simply a record of that fact that I want That is from the Resident as a statement of fact It was made during the negotiations for the new Postal Convention when he was trying to get the Kashmir State to agree to the largest possible contribution towards the motor service for bringing the post up from Rawalpindi

The case I am dealing with relates to the collection of customs duties imposed by the State of Kashmir upon parcels. You will remember that, under the Treaty of 1847, there is a mutual agreement between Kashmir and the Government of India for allowing goods to come in bond, so it is not complicated by that. This is simply a local duty upon goods coming into Kashmir State. The Postal arrangements were made in 1894, between the Government and Kashmir at a time when the Government of India was administering the Kashmir State through the Resident, as President of the Council of Regency; and no provision was made at that time in the agreement about collecting customs duty on parcels In fact, Kashmir finds that a large portion of the customs duties which ought to be paid on goods carried into Kashmir in postal parcels cannot be collected, because the Government of India have refused to enter into any arrangement to facilitate the collection of the duty before the delivery of the parcels. The Government of India insists upon Kashmir State leaving them to deliver the parcel to the addressee, and letting the Kashmir State raise its duty as best it can after the addressee has got it. This is not merely a question of visitors, it is a question of trade You saw that in that sentence from the Resident's letter, which I quoted A large part of the trade, quite naturally, comes into Kashmir in that form, and it is quite impossible to collect the duty *ex post facto*; they cannot do it We all know how lax some people are about declaring dutiable articles when they arrive at Dover, and to expect all the people of Srinagar and other places in Kashmir to come to the State after they have got their goods without paying the duty, and offer it, is making too high a demand on human nature. Now, Sir, that is the point I take it with a very few extracts The letter (No 482, dated 16th February, 1924) from the Resident, Exhibit B, says that as regards the collection of the State customs due on postal parcels the Government of India had no objection in principle to the co-operation desired by the Durbar. Now what we have asked for, or rather

what Kashmir State asked for, was that in British India the system should be applied which is applied there for the posting of overseas parcels from India, namely, the signing of a declaration form as to what the contents are and the value We all do it here in this country when we send a parcel to France, they do it in India when they send a parcel abroad. Kashmir said That is a perfectly feasible system, and in that form it ought to be applied. Well, the Government refused (Resident's letter, dated 4th April, 1928—no reference quoted) The result is a very serious loss of revenue to the Kashmir State. I will not trouble to read the letter because the point speaks for itself; but, of course, it is a very strong reason why the Kashmir Government should want to take over the postal system of the country and run it themselves, just as Gwalior or Patiala runs it

The next case is Sirmoor (page 2047) May I just hand you a large scale map or Sirmoor? (Map handed to the Committee.) If you would not mind glancing at that for a moment, you will observe there are a series of rivers in the State of Sirmoor The brown line indicates Sirmoor of to-day, the green line is what Sirmoor used to be; the yellow line is what Sirmoor says has been taken by the British Government There is a river between the brown and the yellow I have had some little maps printed to go in to the volumes and be bound up (Same handed to the Committee) There is a river between the red and the green on the North West corner Those rivers are used for floating timber down, just as the Jhelum is used for floating timber down. I believe that the Punjab Government charge floatage fees when they are rendering services for looking after timber and providing facilities for people to deal with their timber, buy it and sell it, and so on At any rate, they do on that river that divides the red from the yellow, they share the fees collected there with the State of Sirmoor. In 1847 (Aitchison, Vol VIII, page 306) Sirmoor abolished transit dues at request, but then and since has charged floatage fees for all the various services rendered in connection with looking after the timber and providing landing places and so on No objection was taken to that practice until 1914 It went on from 1847 when transit dues were abolished, until 1914, nearly 70 years, always being treated as part of the forest revenue Then the Government suddenly turned round and said This is transit duty and you must not have it Well, that is the case for Sirmoor

Colonel Peel. Do you say that usage and custom make it all right?

Sir Leslie Scott. I have said that the fact that it is continued for all that length of time is *prima facie* evidence that the Government of India knew it was all right That is the way I prefer to put it, Sir But the real point is that it is nothing to do with transit dues, it is services rendered, facilities afforded on State territory and by State Police, actual watching and all sorts of things, as you will find stated here in the letters: look, Sirs, at page 2051, the beginning of that letter (No 819, dated 14th November, 1908, to the Commissioner and Political Agent, Delhi Division), from the Ruler of Sirmoor "I have the pleasure to intimate that the dues in question are collected from a long time, not as transit duty, but as rent, hire or mart fees for the use and occupation of lands on the banks or chars in the bed of the rivers, where the owners of the timber, their agents or

employees keep or stock their timber, sometimes with a view to facilitate floatage, and at others to transact their business of buying and selling the goods in transit, or temporarily stop for other purposes Besides this the Durbar is *looked upon to take the responsibility* of the protection also of the timber."—They do not want to levy transit duties The next sentence but one:—"The rivers traverse through a large area within my territory, and persons often use and occupy the banks and chars aforesaid for days"

Chairman: I see that.

Sir Leslie Scott: That is all under that heading Then I come to Posts and Telegraphs, Heading A (b) 6. The first case (page 2057) is about Baud State. The point is that what Government did was done as a mere decision, ordering Baud to guarantee the whole cost instead of the half cost of certain works. You find in Exhibit B (Letter No. 2386 W, dated 13th June, 1923, from Political Agent, Orissa Feudatory States) rules were altered by Government orders without notification at all. Where money depends upon these things and it is within the State's sovereign right to say "Yes" or "No" if they choose, it is wrong that they should be made to pay money by orders like that

On page 2070 is the case of Dholpur about Imperial Post Offices. You will understand in putting these cases before the Committee about post offices and postal systems I am not asking you, in connection with them, to draw any inference one way or the other as to whether India would be best off as a whole if there were one postal system for the whole country and one only, or whether there are ways by which the States can still be left to run their own postal systems, by agreement with the Government of India on standard lines, in such a way as to produce the same eventual results as if there were one system for the whole of India I am not raising those points; let the decision be which way you like for the moment for the purpose of an assumption in dealing with these cases. What I am dealing with here are the questions: (1) as to whether the Government have had the right to do what they have done in introducing their own system into the States; (2) whether when they have made agreements they have kept them; and (3) the financial losses caused to the States by what has been done, and the gains of the Government. Those are the three subjects on these cases. The Imperial Post Offices have found their way into the Dholpur State just in the same way as they have elsewhere. It is possible, too, that the hardship of which Dholpur complains is common to the other States also, but that does not alter the fact that the position in which the Dholpur State is placed by the Government of India Postal Department is unfair. Dholpur's complaint is that whereas the Postal Department takes all the profits, it makes the State responsible for certain expenses which ought to be debited to its earnings. The question has two aspects:—First of all, until the year 1907, the State was made responsible for providing, at its own cost, a State guard of four men for the safety of the Post Offices In that year, on the Durbar's protest (No 2287, dated 10th April, 1907), which was addressed to the Political Agent, who is supposed to champion the cause of the State, the guard was reduced by the Postmaster-General (vide his letter No 69/A G 11 G, dated

30th May, 1907, to the Political Agent) to two constables, the Political Agent merely contenting himself with forwarding the Durbar's representation to the Departmental Head and leaving the decision to him.

By notification of the year 1885 the Government of India laid upon the States the responsibility for compensating any losses due to mail robberies within the territories of the States This has naturally made all the States shy of increasing their risks

It would appear that until 1912 there was no system in Dholpur for the payment of Money Orders except at the Post Office In that year on the ground of public convenience the Durbar, by being asked a very innocent question (Political Agent's letter No 260, dated 25th January, 1912), were induced to accept a responsibility by implication. They were asked to say whether there was any objection to the village postman being entrusted with cash for Money Order payments The Durbar replied (No 1832, dated 2nd February, 1912) that they had no objection, and it would appear that the limit of remittance from one post office to another was fixed at Rs 100 It was anticipated that the Post Office would employ its own village postmen But being a commercial department it always studies every possible economy *Consequently instead of employing its own postman, it manages its* business by giving small allowances to Durbar servants who carry official letters from Headquarters to various district offices Recently the State has been asked (Political Agent's letter No 2360/77/27, dated 12th May, 1928) to allow the limit of remittance from one Post Office to another to be increased from Rs 100 to Rs 200, and it is reluctant to do so, even at the cost of public inconvenience, because of the resulting added responsibility in the event of mail robbery The State would have no objection to the limit being indefinitely increased if the Postal authorities would work on their own responsibility.

Yet another aspect of the position in regard to post offices in the Dholpur State is that so far from getting any share of the profits earned by the British postal department, and in disregard to the consideration that it is put to expense by the maintenance of guards, etc, it receives no return in any form or shape from the Government of India; so much so, not even a free supply of service stamps is made to it That does so look as if the supply of service stamps was only given where the State asked and pressed for it Many States have got it. The whole system is wanting in any equality of treatment to the different States. I think I have given you sufficient to indicate the point

In the case of Gondal (page 2062), the Post Office makes money out of Gondal by refusing to increase the rent paid to the State for the use of buildings, although the rents were fixed 50 years ago, and threatens to close all the offices if they are bothered with it any more (vide letter No G 1/25, dated 12th January, 1928, from the A.G G, to the Dewan, Gondal State)

Then Gwalior (page 2062) The Postal Convention of 1885 between the Imperial Post Office and the Gwalior State Post Office was enlarged by an additional Convention in 1888 You will find both Conventions in Aitchison, Volume IV, page 123 *et seq*, and in 1888 this clause (Article 8 (a)) was agreed to "All Imperial letter boxes at present

existing within the Gwalior State territory and served by messengers attached to an Imperial Post Office situated within British territory *shall be closed*" At the date of the Agreement there were still four left. As soon as the Agreement had been made the British Government, at the request of the State, closed them Those Agreements —and this is, I suppose, partly a legal question—in my submission are expressed upon terms of complete equality, so that it is quite clear that the whole administration of the Postal Services in the State of Gwalior was intended by the Agreements to be left to the State, and in so far as subsequently the Government of India pushed its way into the State and started its own Postal system in the State, in my submission, it is a plain breach of the Agreement. The reason I make that submission as to the interpretation of the Agreement is *that that is the only meaning consistent with the broad views of the* language contained, and secondly, that as they were two separate States in the eye of the law, the Government of British India and the Government of Gwalior, there is no room for implication of any rights of internal control being given to the Government of India I should like to add this In Clause 8 (a) of the Agreement, as amended in 1888, there is a provision for Imperial Post Offices at various Railway Stations, but that was only for the exchange of mails and not for the erection of letter boxes The Central India Agency made a Report in that year, 1888-89, containing the following statement, page 44: "That owing to the inability of the State Post Offices to have direct dealings with the railway mail service, it has been found necessary to open small Imperial Post Offices at nearly all Railway Stations, for the exchange of mails between State Post Offices in the vicinity of the railway mail service." That is their only object. All the post offices were to be closed, but that was allowed not to receive letters or to deliver letters but merely to exchange mail bags. As *a result of this provision the Durbar Post Office, while it opened* letter boxes throughout the State, also placed them at all the railway stations situated within the Durbar territories, at varying dates between 1889 and 1914 The Imperial Post Office had no letter boxes on these stations (except two) until the year 1913 In that year and the following they opened letter boxes at almost all the stations where the State letter boxes had previously existed. In 1914 the Resident asked (No 165/15/25-13, dated 12th January, 1914), under the instructions of the Postmaster-General, Nagpur, for a complete list of the Imperial railway stations at which the Gwalior State Post Office had placed State letter boxes The Durbar sent a list (letter No 5841, dated 25th April, 1914). Shortly afterwards the Resident (No 2230, dated 26th April, 1915) informed the Durbar that "the Postmaster-General has announced that before a State letter box is placed at any railway station (except railway stations on the Gwalior light railway worked by the Durbar), the concurrence of the Postmaster-General, Central Circle, must previously be obtained by the Postmaster-General, Gwalior" He further added "Respecting the question of State and Imperial letter boxes, will you kindly supply me with a list corrected up to the 31st March, 1915." They forwarded one (letter No 1792 5-10—no date quoted); they objected to what he had said and forwarded the list Thereafter the Resident interviewed the Finance Member—I think that was Colonel Haksar, as a matter of

fact—and presumably, as a result, the Durbar was induced to leave the decision of the question in the hands of the Imperial postal authorities. But in doing so the Durbar (letter dated 8th April, 1916, to the Resident—no reference quoted) drew their attention to the Postal Convention which provides for the closure of Imperial letter boxes in the Durbar territory and observed that "the language of this clause is quite plain and does not require any comment or explanation for elucidation and I have no doubt the Imperial postal authorities will observe it." But the Durbar's hopes in the fair-mindedness and impartiality of the Authorities concerned were belied when they received the intimation (No 2527, dated 30th April, 1916, from the Resident) that "Imperial postal authorities will be content for the present with the removal of the Gwalior State letter boxes from the 30 stations named in schedule."

The State submits that the Government of India had no right to insist upon the removal of the Durbar's letter boxes from railway stations and to keep their own; it was a direct contravention of Article 8 (a) of the Convention The Durbar may have granted land free of charge to permit construction of railway lines through their territories, but the lands occupied by railways still remain Gwalior territory The terms on which jurisdiction was ceded on four different occasions by Gwalior Durbar are as follows The first two lines are Agra-Gwalior and Neemuch Indore That was entire jurisdiction (Aitchison, Vol IV, page 98) The next one was civil and criminal jurisdiction, on the same lines as the previous one, so you treat all those as the same (Aitchison, Vol IV, page 116) Then the next two were the form after the Privy Council decision in the Hyderabad case, the prescribed form which we have described before (Aitchison, Vol IV, pages 153 and 156)

A very curious fact emerges here, and that is this That agreement, as you will see in Aitchison, was signed by the Durbar on the one hand and the Postal Department on the other, and in consequence of that (Exhibit 19, dated 27th June, 1885, just after the signature of the Convention) the Resident wrote this letter "With reference to the representation made to me lately by the Durbar that the Postal Convention concluded between the Government of India and the Gwalior State does not bear the signature of His Excellency the Viceroy, and more particularly in respect to the letter received from the Durbar of this day's date on the subject, I beg to acquaint you for the information of His Highness the Maharaja, that the question was submitted by me to the Agent to the Governor-General for Central India, and that I have been directed to point out to the Durbar that the Postal Convention does not partake of the nature of a treaty or engagement of such a kind as between the Governor-General in Council and the Maharaja The Convention is, as may be seen from the heading, between the Imperial Post Offices of British India and the Post Offices in the territories of the Maharaja, and is signed with full authority by the Director-General of Post Offices, and is only approved and confirmed by the Government of India I am also to point out that whereas the Salt Agreement was a distinct transaction between the Governor-General and the Maharaja, the Postal Convention is not a political engagement which would naturally

receive the signature of the Viceroy, but it merely concerns the administration of an internal department. From the above you will perceive that it is not considered necessary that the convention should bear the signature of His Excellency the Viceroy and Governor-General of India."

Now, Sir, if that is so, and it was merely an inter-departmental arrangement, I venture to put this question: What right had the Government of India to be giving orders to the Durbar as to what they were to do about the postal arrangements within the State? They went so far as to approve of State letter boxes being removed by force from the stations. I have looked, for curiosity, because that seemed to me such a very odd reason. I find that the Agreements with Nabha and Jind in 1885 and with Faridkot and Chamba in 1886 were apparently executed in the same way as the Agreement with Patiala of 1884, and the Patiala Agreement was ratified and executed by the Viceroy with his own hand The Hyderabad Agreement of 1882 was ratified by the Secretary to the Government of India. Sir, the point, of course, is that the States never know where they are with this kind of jumping about from one argument to another. As regards what happened with Gwalior, my submission is a short one, that the Government of India deliberately broke the Agreements they had made in 1885 and 1888, and they had no right to do it, and imposed, by pressure of superior force upon Gwalior, all sorts of things they had not any right to do, causing Gwalior to suffer very materially. I will leave it at that, Sir, but the whole correspondence is very interesting.

Kashmir (page 2092). Telegraphs. The Kashmir State constructed and maintained its own telegraph lines, over which the British Government exercised no kind of control. In 1879 an Agreement was concluded between the Government of India and the State providing for the free exchange of messages. In 1892, when the State was being administered by a Council nominated by the Government of India, with the Resident in charge of it, or in control of it, the Imperial Government addressed them a letter (No. 1108, dated 30th March, 1892, from the Resident) stating that the general state of telegraphic arrangements in Kashmir was not satisfactory, and suggesting that State telegraph lines should be handed over for management to the Imperial Government. The State Council, which was under orders, accepted the Government of India's proposals, only reserving the Jammu Banihal line for private purposes. The Council requested, however, that the expenditure on the Kashmir lines should be met by, and the income paid into, the Kashmir State Treasury, that His Highness the Maharaja and his brothers, and certain officials duly authorised, be allowed the right of free telegraphy over the Indian system; that the Imperial Department will maintain a staff of signallers qualified to receive and transmit messages in Urdu, and that as far as possible appointments will be provided for the employees of the Kashmir telegraph system who will be thrown out of employment. The Government of India did certain things The proprietary rights of the State were safeguarded by the condition that all expenditure on, and all income from, the State lines should belong to the State. The British Telegraph Department was authorised merely to manage the lines

In 1896 the Government of India addressed a letter (No 2079, dated 19th May, 1896, from the Resident) to the Vice-President of the State Council, conveying for the information of the Maharaja and the State Council that the Government of India had decided to finally and completely take over as part of the Imperial system the Kashmir State lines which were then managed by the Government of India, and that "in future all losses arising from its working will be borne by the Government of India" Sir, what is the justification for that? Whether they had the right to impose an Agreement upon the State Council or not is a matter of very grave doubt in the circumstances, when, in fact, the Agreement was signed by a hand controlled by the Resident. But having made the Agreement how can they turn round and throw it overboard? Well, that is the case, Sir

Now (page 2036) you get the Kashmir post question The Kashmir State had its own postal system until 1894 On the 22nd January, 1894 (No. 260) the Residency forwarded a scheme of amalgamation under which the Imperial Postal Department would manage the State post and the State would receive Rs 10,000 of service stamps The Residency recommended the adoption of the scheme on certain grounds, the last one being perhaps the most important, viz, that the benefits of the more complete postal system of British India would accrue to the State The State Council was not in favour of accepting the conditions proposed and suggested (letter No 7004, dated 11th April, 1894, to the Resident) that arrangements should be made for the supply of service stamps according to actual requirements, and the transfer should be sanctioned for a term of 25 years, reserving to itself the right at the expiry of the term either to take back the entire control of the Post Offices into its own hands or enter into a fresh convention with the Imperial Government In reply (No 3168, dated 12th July, 1894) the Resident stated that the Government of India were unable to accept the proposal that the State should have the right of cancelling the agreement at the end of 25 years, as by the end of 25 years there would be a large postal establishment in Kashmir under the orders of the British Government, and it might not be fair to the officials then employed to allow the Kashmir State to resume the unrestricted control of postal administration The Resident also suggested that as the people would have got accustomed to cheap postal communication with the outside world their interests would have also to be considered The Government of India, however, agreed that at the expiry of the convention, that is, after the 25 years then proposed, they would not object to reconsider the situation A telegraphic acceptance was requested A telegram (No 1273, dated 21st July, 1894), of course, is sent in answer, the Council being under the heel of the Resident, the Government being in the position to dictate terms, the Council have to do what they are told and they do it After the expiry of the 25 years a very reasonable memorial was sent in and rejected, it produced no result Now, Sir, during that time, in spite of the Agreement for uniformity of service and reduction of postal rates, increases have been put upon Kashmir, imposing a very serious burden Look, Sir, at the second sentence of paragraph 2 of the letter (No 260, dated 22nd January, 1894) from the Resident This was before the Agreement was made "The amalgamation will not only secure uniformity, and reduction of postage

rates for places beyond Kashmir to all the inhabitants . . . . . ." So it was assured from the start Then higher rates were imposed, and the Foreign Member of Council of the present Maharaja wrote a very careful and wise letter (No. 16:C, dated 24th April, 1923) setting out the whole thing. I will ask you, Sirs, to read that letter. There are just two passages I should like to read. In paragraph 5, he quotes from a memorandum of agreement between the Imperial Post Office and the Kashmir State *Article 2 of the memorandum ran as follows:*— "All classes of postal articles, and ordinary money orders may be exchanged between Indian and the Imperial Offices in Kashmir and by the Imperial Offices in Kashmir with one another at the inland rates of postage and commission in force in India, without any additional charge on account of State postage. In the cases in which postage could be, and is, paid in stamps, Imperial Postage Stamps alone will be recognised in payment of postage on articles posted at the Imperial Post Office in Kashmir, or handed over by the State Post Office Agents under Article 7. The ordinary rates and conditions of the Indian Post Office will apply to the posting of all articles." In spite of that they put up the rates of postage of letters and parcels without the leave of Kashmir at all. "In Paragraph 2 of your letter you state that with effect from the 1st April, 1923, the rates of postage on parcels in Kashmir State for delivery in India or in Kashmir should be double the Indian inland rates . . . . . . The supreme consideration at the time, which affected the decision of the two parties to the convention, was the efficiency of the service and the benefit to the people of Kashmir, and it appears to the Durbar that if the amendment which you now propose is given effect to such benefit as had been secured by that arrangement will have been taken away from the people of the State, and indeed, their position will be very much worse than that of the people of the rest of India, who will continue to enjoy a lower rate" He goes on to point out that that was against the British Indian Post Office Act which provides for equality of rates to everybody in India.

Then, Sir, take the case of the Kotah State (page 2112) This is a case again of breach of agreement. The idea of extending postal unity—that is the phrase used—in the Kotah State arose for the first time in 1898 That is, the absolute unity of India The then Superintendent of Post Offices in his letter of the 14th December, 1898 (no reference quoted), expressed a desire to have a talk in this matter with the then Dewan of the State in the presence of the Political Agent The matter soon developed into concrete proposals, and the terms on which the Imperial Postal Department were prepared to introduce postal unity were demi-officially communicated to the Durbar (*vide* D O letter No 5 C, dated 20th April, 1900, from the Deputy Postmaster-General to the First Assistant to the Hon the A.G G A perusal of this letter would show that while the responsibilities of the Durbar were on the one hand greatly increased in the matter of safety of the mails and payment of compensation to Government, in case of loss by robbery or otherwise they had on the other hand to buy Service postage stamps at face value, at least to the extent of their consumption and probably more than what they were annually spending on the conveyance of official correspondence within the State under their own Raj Dak arrangements So in fact no compensation for the loss

of postal revenue caused to the Durbar by this change was given His Highness, however, with no previous experience of postal matters, but merely with the desire of co-operating with the Government of India in a scheme in which they felt interested and which, in their opinion, was likely to promote the general well-being of the people, accepted the postal unity under the conditions offered in the Deputy Postmaster-General's letter No. 5 C, dated 20th April, 1900 (*vide* letter No 1142, dated 24th July, 1900, from the Dewan, drafted by the then Political Agent) So the whole thing was prepared for him and he signed it.

The following is an extract from a note by the Dewan after his meeting with the Deputy Postmaster-General, Mr. Barton Groves "Mr. Barton Groves dwelt on the advantages that would occur to the people of Kotah by the opening out of the Government Post Offices in different parts of the State, and in case the Kotah Durbar think fit to establish them that Government would make them certain concessions as regards the carrying of the Raj official correspondence . . . . . . His Highness would be prepared to favourably consider the proposal of Mr Barton Groves to throw open his *State to the Government Postal Service, provided they undertake to* carry the whole of the Raj official correspondence throughout the State, free of all charges" Mr Barton Groves writes a letter (No 5 C, dated 20th April, 1900), paragraph 6 of which states "With regard to item No (*b*)"—that is as to what concessions the Department would make in the matter of carrying State Official Daks free, etc.—" I am authorised to offer the following conditions, which are identical with those obtaining in Bharatpur, Marwar, and numerous other States which have adopted 'Postal Unity'"—You notice those words "and numerous other States."—Then Condition VI is "The privilege of using Service postage stamps (under the frank of the various State officials), who would be duly authorised, would be granted to the State, in respect of all correspondence 'On State Service' posted and delivered within the limits of the State" and certain facilities were to be granted to the Maharao and his Private Secretary Then, when signing, after a good deal of pressure, the Maharao writes (No 1142, dated 24th July 1900) "I send you to-day my official reply as drafted by you" The last sentence of his letter is important "However, not to be kept behind or deprived of any legitimate advantages, I trust you will be good enough to convey to the Deputy Postmaster-General that Kotah would claim all those concessions that have been or may hereafter be made to those States who have entered or may hereafter enter into postal unity with the Government of India"—a "most favoured nation" clause! That is what this is On that basis, the deal goes through.

Then the history of it subsequently is this They tried to persuade him that he was only entitled to a limited number of Service stamps, very much below the actual need of the State They put forward really not quite an honest statement that he had agreed to be bound by the same conditions as Bharatpur and Marwar, which were referred to in that letter (No. 5 C., dated 20th April, 1900) that I have read to you, ignoring the condition in that letter of "and numerous other States" and ignoring the fact that they had promised in that letter in Condition VI "on all correspondence" The Director-General of

the Post Office (letter No 10 S.N S, dated 12th July, 1904, to the A G G) admits that that reservation was agreed to as part of the arrangement· "The reservation was agreed to as part of the arrangement."

Then they tried (letter No. 1083 M.S. 66, dated 17th October, 1904 from the Deputy Postmaster-General to the Political Agent) to put on a condition that there will be no increase in the number of stamps in the future unless it can be met "from the surplus revenue of the Post Offices in the State" which was never in the agreement. Then (letter N S 7, dated 12th January, 1915, from the Postmaster-General to the Political Agent) they raise it to Rs 10,000 a year on condition that "this increased grant should be considered as final, and that it could not be enhanced in the future." The Dewan points out (letter No 403, dated 28th November, 1924, to the Political Agent): "An agreement was drawn up and the Political Agent (*vide* his order dated the 13th May, 1892, to his Head Clerk) ordered his Head Clerk to explain the purport of this to the members of the Council and obtain their signatures to the deed. It was thus that the agreement was signed" In letter No. 1096, dated 12th March, 1919, from the Dewan to the Political Agent they ask for fair play Then (*vide* letter No 445 G./25, dated 14th November, 1925, from Assistant Director-General, Telegraph Traffic, to the A.G.G. Rajputana) they are asked to abide by the accounts sent in by the Director-General, but they say in their reply· "Let us know what they are. Let us know something about them" They are told that the Agreement does not allow them to have any audit. It is quite true that there is no provision for an audit, but the accounts have to be rendered because the payment depends upon the accounts, and they are not allowed it That gives you an idea of the kind of thing the State complains of on this head

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Minutes of the Evidence given before the Indian States Committee at Montagu House, Whitehall, S.W.1.

Tuesday, 13th November, 1928, at 3 15 p m.

PRESENT.

SIR HARCOURT BUTLER, G C S I, G.C.I.E., *Chairman.*
Colonel The Honourable SIDNEY C PEEL, D S O
Professor W. S HOLDSWORTH, K C.
Lieutenant-Colonel G D. OGILVIE, C I E., *Secretary*

Their Highnesses the MAHARAJAS of KASHMIR and NAWANAGAR and His Highness the MAHARAO of CUTCH

The Right Honourable SIR LESLIE SCOTT, K C, M.P., appeared on behalf of the Standing Committee of the Chamber of Princes

Sir Leslie Scott· Page 2137, Sir Patiala State. From the very beginning the Patiala State had its own Postal Department and Post Offices In the year 1884 a Postal Convention was concluded between

the Patiala State and the Government of India for the exchange of correspondence, parcels and money orders (Aitchison, Vol. VIII, page 228). This was revised in 1900 (Aitchison, Vol VIII, page 233) and note, Sir, that the Convention of 1884 was signed by the Marquis of Ripon by way of ratification In the year 1885 there were still four British Post Offices working in the Patiala territory, but, on the representations of the Council of Regency these Post Offices were closed. That was because of the Convention which provided that there should be no British Post Offices in Patiala In 1888 (when, Sirs, there was a minority) the Government of India decided (*vide* letter No 99, dated 3rd April, 1888, from the Inspector-General, Railway Mail Service, to Postmaster-General, Punjab) all of a sudden to open Mail Agencies at Bhatinda and Rajpura. As to their functions it was intimated by the British Postal Authorities:—(1) That these Mail Agencies will exchange mail bags with the Patiala State Post Offices. (2) That they will take out letters from the letter boxes at the Railway Stations (3) That they will have no hand in the delivery of letters outside the Railway limits. (4) That the letters with Patiala State stamps will not be taken as paid letters if posted in the letter boxes on these Railway Stations It should be noted that this proposal amounted to a clear breach of the provisions of Articles 2 and 4 of the Postal Convention I should like you to look at the Convention of 1884, please, Sir, in Aitchison, Vol. VIII, page 228 Article 2 of the Convention says: " There shall be two Offices of Exchange, viz, the Imperial Post Office at Umballa, on the side of British India, and the Patiala State Office at Patiala, on the side of the Patiala State These Offices of Exchange shall alone be authorised to deal with articles giving rise to accounts" Article 4 " These overprinted postage stamps, postcards and embossed envelopes, overprinted with the words 'Patiala State', shall alone be used in the Patiala State for the pre-payment of INLAND correspondence, and they shall be recognised by the Imperial Post only when attached to inland correspondence, posted within the limits of the State of Patiala " Subsequently, the Patiala State letter box on Rajpura Railway Station was forcibly removed by the British Postal Authorities (*vide* letter No 6146, dated 19th September, 1891, from the Superintendent, R M S, Ludhiana Division, to the Superintendent, Simla Division) That is a good deal later on

In 1888 a Mail Agency was opened at the Railway Station, Sirhind, (*vide* memorandum of the Superintendent, Simla Division, No 525, dated 20th June, 1888), and the Patiala State letter box was removed (*vide* Diary of the Superintendent, R M.S, Ludhiana Division, dated 20th July, 1888) In 1889 a regular Post Office was opened here When these papers were put up before the Council of Regency, the Postmaster-General, Patiala, was directed to discuss the matter with the Punjab Postal Authorities and impress on them the disadvantages resulting to the State from this policy of the British Government. This representation, however, did not bear any fruit and the reply (No 3051, dated 23rd April, 1890) was received from the Postmaster-General, Punjab, that there did not appear to be any necessity of effecting any change in the system

In 1892 the Government of India decided to open Post Offices at Patiala and Lalru Railway Stations. Strong and emphatic protests were lodged by the Foreign Minister, Patiala, against this proposal

(*vide* telegrams dated 30th December, 1892, and 7th July, 1893, to the Superintendent, Simla Division) In reply (No 24589/A243, dated 30th December, 1892) the Foreign Minister was informed that the new Imperial Post Offices at the Patiala Railway Station would be established within the Railway enclosure. This evoked another strong protest (dated 2nd January, 1893—no reference quoted) that the Patiala State could not tolerate this unauthorised interference and the proposal was finally dropped These encroachments upon the rights of the Patiala State were brought to the notice of the Punjab Government by the Patiala Motamid in 1893, and it is clear from the reports submitted by the Motamid that the Punjab Government were cognizant of the fact that in following the policy laid down by the Government of India they were violating the terms of the Postal Convention

In 1899 a Mail Agency was opened at Dharampur. That was in the town which is away from the railway. There was a protest at the time and subsequently the Foreign Secretary of Patiala (No 441-G/C, dated 2nd June, 1914) urged · (1) that the income of the Patiala State Post Office at Dharampur had suffered, and was still suffering considerably owing to the existence of the British Post Offices within the jurisdiction of the Patiala State; (2) that it was a breach of the Postal Convention, (3) that the circumstances which necessitated the opening of the British Post Offices had ceased to exist; (4) that there was a separate Imperial Sorting Office at Dharampur Railway Station, and the answer (Political Agent's letter No. 2924, dated 19th August, 1914) from the Government was that the closure of the Dharampur Post Office was contrary to the public interest. Not satisfied with this reply the Patiala State forwarded another representation (No 2270, dated 9th November, 1914, to the Political Agent) urging that there was no justification for the existence of the Imperial Post Office at Dharampur

In addition to encroaching upon the postal jurisdiction of the Patiala State, the British Postal Authorities have occasionally exhibited an unreasonable tendency to encroach upon the legitimate business of the State Post Offices; for instance, in one particular case an official of the British Post Offices visited Rajpura for the purpose of canvassing business from the local shopkeepers by promising various facilities to them, if they would employ the British Railway Post Offices rather than His Highness's Post Offices for the transaction of business (vide letter No 1683, dated 26th January, 1928, from the Foreign Minister, Patiala, to the Secretary to the A.G G.) You will see than an official was appointed by the British Post Office to make a joint investigation with a Patiala Postal Official, and that they made a joint report (dated 20th March 1928), saying there had been a bad case of deliberate canvassing of business

His Highness' Government contend 1. That Article 2 of the Postal Convention provides that there should be exchange of mails between certain selected British Post Offices in British India and State Post Offices in the Patiala State and that, therefore, the opening of British Post Offices in Patiala territory is a clear infringement of this Article 2 That the Government of India are violating Article 4 of the Postal Convention which lays down that Patiala stamps alone shall be used in Patiala State —You will see in his letter No 3144, dated 2nd May,

1917, to the Foreign Secretary, Patiala State, that was admitted by the Political Agent himself —3. That the grant of "full and exclusive power and jurisdiction of every kind" over railway lands in Patiala territory—which applied to two of the railways, you remember—does not and was not intended to cover the right to open Post Offices, inasmuch as the lands as well as the jurisdiction over the lands were ceded for railway purposes, and the opening of Post Offices is not in any way connected with the railway administration —That is covered by the principle of the Hyderabad decision, of course 4 That the opening of British Post Offices on Railway Stations in the Patiala territory has occasioned considerable loss to the Exchequer of His Highness' Government and is, therefore, contrary to the distinct assurance given by the Government of India that the cession of jurisdiction over railway lands was not intended to affect the revenues of the State, vide Patiala case under head A (a) ii a, which your Committee will remember quite well

Then the losses are shown in Exhibit X (page 2153). I will not trouble you with them in detail, you can refer to them; they are substantial. In the documents there are certain letters of considerable interest I will just refer to one or two Take Exhibit C (page 2140) It is dated the 19th September, 1891 (No 6146), from the Superintendent, Ludhiana Division, to the Superintendent, Simla Division "I beg to state that I have frequently addressed you regarding the removal of the Patiala State Post Office letter-box from the Rajpura railway platform As yet no step has been taken to comply with my request As, however, the State Post Office is not allowed to have a letter-box at the railway station, I have caused the letter-box to be removed" That is addressed to the Superintendent, Simla Division It is by him sent on to the Postmaster-General, Patiala, for information (No. 14208, dated 24th September, 1891) I venture to submit that is a most high-handed proceeding in itself. That letter shows a complete misconception of the legal position in the mind of the Postal Authorities; it also shows that the Government had not taken any trouble whatever to see that the Postal Authorities knew what the position was The details about it being taken away do not matter a bit Then take another one, Exhibit E, on page 2142, which is headed "From the diary of the Superintendent of the Ludhiana Division, dated 20th July, 1888" "The Sirhind Railway Station boasts of two letter-boxes, one cleared by the R M S Mail Agent, Sirhind, and the other belonging to the Patiala State, cleared by the Postmaster, Bassi This competition, however keen, is not really necessary, and as the Inspector-General has decided that the inhabitants living within the Railway fencing are Imperial Servants and can only be administered to by the Imperial Post Office, it would appear that the Patiala State letter-box has no business at the Sirhind Railway Station . ." You observe the way in which these postal gentlemen lay down the law, and lay it down wrongly, saying that the subjects of the State, because they live within the Railway fencing, are Imperial servants It illustrates an entirely wrong attitude of mind

Then there is an interesting report (dated 6th January, 1893, from the State Motamid in attendance on His Honour the Lieutenant-Governor, Punjab) Exhibit L (page 2144) I will not pause to read it, but will you kindly mark it to look at it?

I want you to turn now to Exhibit R (page 2148) in which the Postmaster-General, Punjab, lays down the law again erroneously, in my submission, (No. 39/4/4, dated 17th August, 1914, to the Political Agent, Phulkian States): "I have the honour to say that the Government of India have always reserved to themselves the right to establish Post Offices in Native States, whether at railway stations or elsewhere." There is no such right. Then, will you look at Exhibit T (No. 3144, dated 2nd May, 1917, from the Political Agent, Phulkian States, to the Foreign Secretary, Patiala)? This is from Mr. Crump, who, you will remember, wrote the letter of the 13th November, 1917, about railway jurisdiction and sovereignty that I read some time ago, in which he lays down the law in the same sort of way: "With reference to your letter dated the 9th November, 1914, with regard to the closure of the Imperial Post Office at Dharampur, I am directed to say that the Postmaster-General, Punjab and North West Frontier Circle, who was addressed in the matter, has replied, under instructions of the Director-General of Posts and Telegraphs, that the Government of India reserve to themselves the right to maintain or establish an Imperial Postal line or Post Office within a Native State, whether at a Railway Station or elsewhere, *wherever desirable in the interests* of the Empire" There, again, you have an entirely erroneous contention, in my submission That is all that I propose to read to you of the Patiala case.

Then we come to the Railways, under heading A (b) 7. Dhenkanal State. A very large area about 32 miles in length was, under orders of the Government, ceded during the minority of the Chief by the then Superintendent for inadequate compensation. That the compensation was inadequate appears from Exhibit A (letter No. 1812, dated 27th July, 1923, from the Superintendent of Dhenkanal to the Deputy Commissioner, Angul) where are set out the rates in comparison with what was done at other places

Then I come to Indore State (page 2155) This is a case where the Government of India gave a decision in 1910, proposed to act on it in 1912, issued rules based on it in 1918 Both the decision and the action on it, and the Rules, in my submission, were illegal encroachments on State rights, and inconsistent also with the agreement between the Government and the State made in 1864. It took ten years from 1918, a long correspondence and a weighty legal opinion from two Indian Counsel, to convince the Government that they were wrong, and they finally retired from the position that they had taken up. The point of the case was that the Government of India claimed that it was within their rights, under the ordinary cession of railway jurisdiction, to set up oil bulk storage tanks within the Railway premises, and that the Railway Company were entitled to lease those tanks for the permanent storage of oil and keep the rent themselves In the end the Government gave way, recognising that the only purpose for which the grant of land was made was for Railway use, and the grant of jurisdiction was only in connection with Railway purposes; and that under neither head were they entitled to make permanent profits out of the permanent use of the land for other than Railway purposes. I do not propose to read the case in detail, but you will observe that there were certain admissions made on behalf of the Government to that effect. You will see one from Sir John Wood,

the Resident, in Exhibit 4 (No. 3496, dated 25th October, 1912, to the Indore State): "The matter has been referred to the Government of India, and I am now informed that they decided in 1910, after the most careful consideration, that land used for tanks for receiving and storing oil, pending its removal by the consignee, should be held to be land used for *bona fide* Railway purposes, no sale of bulk oil being allowed in Railway premises" Under Paragraph 2 (b) you will see there is a reference to temporary storage But in spite of that, in Paragraph 3, it says· "In these circumstances, the Government of India have expressed regret that they cannot admit the claim of the Indore Durbar to receive the rent for land leased to the Indo-Burma Petroleum Company within Railway limits at Indore for the storage of kerosene oil." In the end the State took the opinion of Sir Sivaswami Aiyer and Sir Sankaran Nair, and sent it to the Government (letter No 108, dated 9th February, 1922, to the Secretary to the A.G.G., Central India), and the Government climbed down by letter No. 677 B, dated 12th April, 1923, from the Secretary to the A G G., Central India. "With reference to the correspondence ending with Mr M. Govind Rao's letter No 108, dated 9th February, 1922, on the above subject, I am directed to inform you that the Government of India have arrived at the following decision in this matter: (*a*) That the Railway Administration are not entitled to lease lands within Railway limits to Oil Companies for bulk oil installation; (*b*) That the sale of oil within Railway limits is not permissible except with the consent of the Durbar this applies also where actual sale takes place in the city, and the oil is delivered from the depots within Railway limits, and (*c*) That oil sent in small consignments from the oil installations at Indore Station to other Indian States, without leaving the Railway limits, is not exempt from duty payable to the Durbar." So that you see after a fight extending over about 18 years altogether, the Durbar finally won. The comment, of course, is that the system which causes a wrong view to prevail for 18 years so easily, in spite of the real point being brought to the notice of the Government, must be wrong It cannot be conceivably sound business, or sound policy, any more than sound law, that that sort of thing should happen That is my respectful submission there. In this case, as in others, the rents that had been received in the interval are not refunded In case after case that you will notice here in this volume, amongst a comparatively small number of cases where the contentions of the State have ultimately prevailed, on the admission being made some excuse or other is put forward, and the net result of it is that there is no refund of money that has been improperly received That is an aspect of the matter which is wrong, and, in my submission, one ought to try and find a remedy for it

Then the next case is "Restriction on the opening of Tramways in the Indore State" (page 2177). In 1911 the Resident at Indore wrote to the Minister of the Indore State (No. 2681/67-99, dated 12th July, 1911) to the effect that "the Government of India have now laid down that no Tramway project, other than a purely urban project, should in future be decided upon without the approval of the Government of India." The State submits that such an order, on the face of it, interferes with the internal autonomy of the State. You see the letter

stated that perfectly definitely, and the reason is given that it is from a purely charitable motive, to protect the Durbar from unsound or risky speculation. Well, they are quite prepared to take the risk. The form of protection which they get is one which prevents the development of their State, as you will appreciate from the next case of Nawanagar State (page 2178), which I now come to.

There are three cases here. They are quite separate cases Are you familiar with the map of Kathiawar?

Chairman: Yes

Sir Leslie Scott: The position of these Railways is really rather important here I have got them in mind. Perhaps I might just hand this map to Colonel Ogilvie. This is on quite a small scale, but it is quite enough for this purpose. It is the Railway map This story of the State of Nawanagar is a history of tragic impediments in the way of the development of the State for a series of years. Dwarka, you remember, is up at the North-West corner. I think it is actually in Baroda territory. These three cases are each of them, in my submission, very serious cases.

Case "A." In 1907 the first attempt was made to open up the territories of the Nawanagar State, and the project of the Jamnagar Dwarka Railway was taken up by His Highness. Dwarka is a great pilgrimage centre and the linking of Dwarka with the railway system in Kathiawar through Nawanagar was desired by the State of Baroda also. Negotiations were, therefore, set on foot for a loan to be advanced to the Nawanagar State by the Baroda Government for the construction of the railway. The estimated cost of the line was about 30 lakhs An agreement was arrived at between the two States, subject to the sanction of the Government of India, by which the Baroda State agreed to advance Rs 30,00,000 to the Nawanagar State, to be repayable in certain yearly instalments, the interest on the loan being 3½ per cent. during the period of construction and 4 per cent. thereafter The Government of Baroda also undertook to pay off the debt of Rs 20,00,000 due to the Gondal State from Nawanagar, and to charge for this loan interest at the rate of 4½ per cent per annum instead of 5 per cent. which was being charged by the Gondal State The scheme, as well as the agreement, was forwarded to the Government of India, who deputed a member of the Railway Board to examine the scheme on the spot. After mature consideration both the construction of the line and the loan by the Baroda Government were sanctioned by the Government of India. But suddenly in 1911-12, for reasons not disclosed or explained to the Nawanagar State, the Government of India withdrew their sanction, with the result that the project had to be given up. This arbitrary action of the Government of India resulted in a serious loss to the Exchequer of the State, for when the construction of the line was ultimately taken up in 1922, with the formal sanction of the Government of India, the cost of the construction came to nearly Rs.65,00,000, i.e., more than double the amount it would have cost had the Government of India not arbitrarily withdrawn their sanction in 1911-12

Case "B" In 1917 a letter (No 3364, dated 27th June, 1917) was addressed to the Agent to the Governor by His Highness the present

Maharaja stating that the Nawanagar State contemplated the construction of two railway lines within the territories of the State, and requesting the Agent to seek provisional sanction to the scheme from the Government of India It was also pointed out that the two proposed lines fell entirely within the limits of the Nawanagar State, and were much needed from the point of travelling convenience of the subjects of the State, as also of the development of the trade, especially of the Ranpur quarries —Those are very valuable limestone quarries in the direction of Porbandar, of stone similar to that wonderful stone of which so much of the town of Porbandar is built —In reply (No. Ry/39, dated 7th August, 1917) the Agent to the Governor stated that "the point is not yet reached at which sanction for construction can be asked for. The interests of the Gondal Porbandar Railway are involved, and will have to be considered" In 1926, the question of the construction of one of the lines, i.e, from Khambhalia to Bhanwad, was taken up, and the Agent to the Governor was again requested to obtain the sanction of the Government of India (No 2153, dated 17th May, 1926).—It is part of the same project —It was urged by the Nawanagar State that the proposed line would, besides providing transport for the produce of the divisions of Khambhalia and Bhanwad, open up the quarries at Ranpur which abound in excellent stone, and for which there was sure to be a growing demand In reply, a letter (No Rly/44, dated 28th July, 1927) was received by the Political Secretary from the Secretary to the Agent to the Governor conveying the sanction of the Government of India to the construction of the proposed Railway, subject to the condition that the Nawanagar State would be required to pay compensation to the Porbandar Durbar in the event of the new line proving injurious to the Porbandar Railway after a survey of the first five years A strong protest (letter No 1384, dated 6th January, 1928) was entered by the Nawanagar State against this conditional sanction given by the Government of India It was pertinently pointed out that out of the total mileage of 36 the Porbandar Railway passed through no less than 18 miles of the Nawanagar territories and that, therefore, the claim of the Porbandar State for compensation was most unreasonable, especially in view of the fact that the Porbandar State had exploited part of Nawanagar State for nearly half a century. It was also stated that the Nawanagar State could not avail itself of the sanction, qualified by the conditions, and therefore proposed to build a steam tramway on the proposed alignment instead of a metre-gauge Railway The Agent to the Governor replied (No Rly/44, dated 20th January, 1928) that the consideration of Porbandar's interests might continue to be necessary before even the proposed steam tramway could be sanctioned

Case "C". It is a proposal to join Jasdan and Rajkot. Jasdan is east-south-east of Rajkot at the end of a branch line of the Bhavnagar Railway and the proposed line would have tapped a very large piece of back country of the Nawanagar State and would have been of the very greatest value in bringing fodder and food, and would also have connected the isolated districts of the State with the Nawanagar Railway at Rajkot. In 1920 the States of Rajkot and Nawanagar entered into an agreement (dated 11th April, 1920) for the construction of a Jasdan Rajkot Railway, and the States requested the Agent to the Governor to obtain the sanction of the

Government of India to the construction of the Railway at the expense of the Nawanagar State. Survey was made at Nawanagar's expense in 1921-22. In 1924 the Nawanagar State was informed (Letter No 697-1, dated 10th January, 1924, from the Government of India to the A G.G., Kathiawar) that the Government of India had come to the conclusion that the assurance which was given to the Durbars concerned in 1913, that " there shall be no extension of the branch line whatever " —that is the line to Jasdan—" except that the Gondal Railway shall be permitted to connect Jasdan with Lathi"—that is on the South— " *if they desired to do so* " must be adhered to. It is also stated that the Government of India would, however, be prepared to reconsider the proposal after a period of 20 years when they would be justified in holding themselves free to consider any such extension. In reply, a letter (dated 5th March, 1924—no reference quoted) was addressed to the Agent to the Governor urging: (1) That the exact significance of the words cited in the Government of India's orders can only be understood by appreciating the conditions existing at the time they were written (2) That upon a proper consideration of the surrounding circumstances, the true meaning of the words appears to be that " this branch of Bhavnagar line "—that is the branch up to Jasdan—" should never be allowed to extend beyond Jasdan as part of the Bhavnagar Railway system, as a punishment to the Bhavnagar Durbar for making a line without sanction." (3) That if a period of 20 years is sufficient to justify the Government of India in holding themselves free to consider on its merits any proposed extension from Jasdan, a period of 12 years, which has now elapsed, is ample in light of the reasons which led the Government of India in 1913 to frame the condition (4) That it was not reasonable that the cultivators of the Nawanagar State and those of Rajkot should be penalised for another seven years. But these arguments did not satisfy the Government of India who refused to reconsider the orders previously passed by them (vide letter No 158-1, dated 23rd June, 1924, from the Government of India, Political Department, to the Bombay Government) A letter (No 2049) was addressed by His Highness the Maharaja to the Agent to the Governor-General, dated 16th March, 1928, requesting him to obtain the sanction of the Government of India to the construction of the Rajkot Jasdan line at an early date, in view of the pressing demands for increased Railway facilities No reply has yet been received from the Government of India. The inner meaning of that is not quite clear on its face. That line from Gondal to Jasdan was a line constructed by the Bhavnagar State, I think, in co-operation with Jasdan and they made it without getting the sanction of the Government of India. The Government of India apparently did not take any action in the matter until the railway was nearly completed As it was nearly completed all they could do was to give a formal sanction coupled with a very severe reprimand, and this clause that they put at the time in their minute was simply a punishment to Bhavnagar In effect it amounted to this: " If you will make lines without getting sanction you shall be punished by not being allowed to make any further extension of the line for another twenty years " Well, whatever may be said for the penal discipline applied to Bhavnagar, it is no reason why Nawanagar should be punished If you look at that map that you have there before

you, Sir, you will see that the line from Jasdan to Rajkot connects up a piece of back country of great importance, going through a number of different parts of different States, and that it is obviously of great general service And there is another reason why that line is of great importance. The east and west line through Rajkot from Wadhwan is a line of limited traffic capacity, as you know, in certain seasons it is taxed to more than its capacity as things stand, and in a famine year it is unable to bring the supplies that are needed for the starving population and cattle, and this line through Jasdan would be an auxiliary line which would relieve the pressure in times of stress upon the main line, *but it would not compete unfairly with the main line because the* main line is shorter in distance and therefore can always control the freights

Those three cases are very striking, in my submission. The argument is based upon the sovereignty of the State and a submisseion that the insistence by the Government of India upon sanction to railways of this type, which are obviously not strategic railways at all and have nothing to do with it, is not supported by any legal right The present policy of the Government of India has made it extremely difficult for the Nawanagar State to develop its natural resources and to improve thereby the condition and circumstances of its subjects The present policy of the Government of India has caused serious loss to the revenues of the State, in particular the arbitrary withdrawal of sanction in 1911-12 has taxed the Exchequer of the State to the extent of about Rs. 35,00,000 in capital charges, apart from the higher rate of interest; and the loss to the State by the enforced delays in construction cannot be put at less than two crores of rupees His Highness is here, Sir, and I would like him very very shortly to add a word or two on the interference with the development of the State and the loss suffered by the State on account of this conduct of Government in relation to the railway projects of the State

H H. The Jam Sahib of Nawanagar There is one other point which has cropped up since my arrival here, of which Sir Leslie Scott cannot possibly be cognisant, and that is that the State of Morvi controls the only railway line which gives access, from Rajkot onwards, to the Jamnagar-Dwarka Railway Now I want the Committee to understand that that Durbar has penalised the whole trade of Nawanagar by setting up special rates against us, as against the rival Port of Okha If we had an alternative line they could never have done that That alternative line would have saved the situation for all the merchants of my port. I cannot tell you the harm that has been done to the development of my port this year by the unfriendly action in differentiating between the rates I am quite sure His Highness the Gaekwar, though he may profit for the time being, must see the injustice of this and would not himself countenance such proceedings; it is the unfortunate unneighbourly relations between Nawanagar and Morvi, since long before my time, which has led to this. If we had the alternative line which we demand, such a thing could never have taken place, because the alternative line from Jamnagar is so very few miles longer that it would pay my merchants to send by the little longer route and modify some of the losses which they have already suffered during the last six months. With regard to the other losses in development, of course, the valuable

quarries of Ranpur have not been in use because there is no transport. If we sent the produce of these quarries by Porbandar they would naturally put on a prohibitive duty in order to safeguard their own interest; that would be right; I could not complain of that, because naturally each one in this world is for himself, I appreciate that. I could have no complaint against Porbandar.

Colonel Peel: But you would not like it all the same?

H.H. The Jam Sahib of Nawanagar: I may not like it, but I could not call it unjust I mean I want to be completely prepared for it I could not take any exception if he tried to penalise my stone as against his; it would be quite a just proceeding. But in order to obviate this I started this line, Khambhalia to Bhanwad and from Bhanwad to Ranpur, to develop these quarries Over and above that the municipality of Karachi have asked us to supply them with granite for making the roads in Karachi and Sind, and we could supply metal required also from the quarries close to the other Ranpur quarries which are building-stone quarries. In order to enable us to send this at a comparatively cheap rate to Karachi, I wanted this railway. It would also enable me to farm out the land that is lying fallow in the district of Bhanwad and Kalyanpur to farmers who also would be helped by the extra transport facility which they would get; but unfortunately there again we have been so handicapped by the sanction not coming to us, and by delays which I think really are unjustified, because the line lies really only within my State and is not going to be joined with any other line First of all we were asked to join it with the Porbandar line on the other side Well, that would short-circuit my other line with regard to Dwarka traffic; that would not pay me The line which really pays me is the portion between Jamnagar and Khambhalia, which is the most highly populated district I have I wanted to extend this line to Dwarka, but that is not the line which pays us I trust that with His Highness the Gaekwar's development with regard to the port we shall have better results. I was most anxious that this line should be given to us in order to develop the rest of our territory. We have been waiting now, roughly speaking, 10 or 11 years. When that sanction will come I do not know. But then, owing to the new rules that were passed by the meetings of the Standing Committee and the Political Department, it was said that the States could develop their tramways without any sanction Whereupon, when I found this difficulty, I said: Very well, I will not make a railway that will join with the other system, but I will make a steam tramway Whereupon the Agent suddenly turns round and says: The same difficulty arises with regard to the tramway.

Colonel Peel. Your contention is that in the case of a line, whether tramline or railway line, made entirely within your own territory, you ought to have complete freedom of action?

H.H. The Jam Sahib of Nawanagar· That is one of my contentions, and if there is any objection I should be made aware of it. I should be allowed to make a steam tramway not as part and parcel of the other system; that is to say, alternatively, to tranship. Transhipment is a very inconvenient method, but it is better than no transport at all. Recently the Government of India, on the representation of the

Morvi Durbar gave them I forget how many years, but I believe gave them 10 years of complete enjoyment without a competitive line. Morvi's State railway lying between Wadhwan and Rajkot does not traverse a yard of Morvi territory, and for the last 60 years they have exploited that against the rights of the Wadhwan Durbar and the Rajkot Durbar, and without any reference to us and other interested States Government go and give away 10 years of absolute monopoly for Morvi to further exploit by unfriendly action such as I have already quoted

Chairman: Thank you

H.H. The Jam Sahib of Nawanagar: I hope I have made my point clear. I should just like to add that in any future development I am quite sure that all the Princes would agree to some reasonable compromise and arrangement with each other so as not to hurt each other's lines; that I feel sure we are all quite willing to do, but I think with regard to a line like the present one an alternative route is necessary in the interests of Kathiawar as a whole You have only to refer to the view taken of it by the various Agents to the Governor in recent years, they say that an alternative line is a necessity

Sir Leslie Scott I shall deal with that aspect of railway development in the future under some system of harmonising on fair terms the interests of different States and of different districts of British India, as a general topic

Then, Sir, the next heading A(b)8 is a question of roads (page 2193) raised by the State of Jaora Here again is a similar question The general advantage to a country of a system of good through roads is, of course, not challenged, but the contributions made directly or indirectly to it by each State, and the extent of use by each State are factors which are often overlooked. The complaint made by Jaora, Sir, is that the Government of India by mere decisions, to which Jaora was not a party, on which Jaora was not consulted, ordered Jaora to make certain specific contributions to the upkeep of certain specified roads Jaora complains that there is no power to give orders of that kind, and secondly that the orders that were given disregarded two important factors in the problem firstly, the usefulness of the roads to Jaora, as a State, for local traffic as distinct from their use for through continental traffic, and, secondly, the contributions made by Jaora in other ways

It may be submitted that this policy was not in the first instance framed in consultation with the Princes whose interests it was calculated to affect, and consequently its pursuance in spite of objections on the part of the State can hardly be based on any justification None the less consent without demur was the only course open. That the policy of the Government of India, as it stands at present, does not take sufficiently into consideration the interests of the States, whom it directly concerns, is illustrated by the above facts. That is the way Jaora puts it I will not trouble with the details; the details speak for themselves.

Then the next subject is heading A (b) 9, "Natural Resources" (page 2197) Of course, railways are really under that category and also, as you saw from the Nawanagar case, many other things are too; but certain cases are collected under this head You will observe that

as regards Baud and Dhenkanal, they complain of the orders they get under the sanads which, you will remember, they submit ought not to have been imposed upon them.

To the end of curbing the Gurkha power the British Government invited the assistance of the Punjab Hill Chiefs and gave them a clear and *distinct assurance that their ancient status* and *rights would be* restored and guaranteed by the British Government. (*Vide* Punjab Government Records, Vol II, pages 442/455) After the conclusion of the Gurkha War, sanads were issued to the Simla Hill Chiefs recognising their sovereign rights and powers. (Aitchison, Vol. VIII, pages 302/316) Several restrictions were, however, imposed on the authorities of the States, but none of these restrictions had any bearing on the control and administration of forests lying entirely within the territories of the States. In spite of these pledges and guarantees, the Government of the Punjab have gradually extended their control over the forests of Simla Hill States, and these forests are being exploited by that Government at the expense of the States, as the following cases show.

The case of Bushahr State is *really an extraordinary case* The first transfer of the control and management of the forests of the State of Bushahr was in 1864; then again in 1871 there was a further agreement. Those agreements were embodied in a revised agreement in 1877 (Aitchison, Vol. VIII, pages 327/334); that agreement contains a clause. "The agreement shall continue in force for a term of 50 years commencing from the date of the present agreement On the expiry of this term it shall be renewable at the pleasure of the British Government for a further term of 50 years It shall be again renewable in like manner at the end of every term of 50 years." Now I do not know whether as a matter of interpretation those words ought to be given their literal meaning, but if they ought, it is an agreement giving to the Government a perpetual right of renewal of the right to exploit the forests on the terms of that lease then settled in 1877. It is that lease which is the subject of the renewal clause, and that means the whole of the terms in the lease

Now, Sir, these forests are very valuable. This Agreement ran out last year. The Government had made immense profits out of the management of these forests. That is known. The Ruler of Bashahr last year did not want to have another lease at all; he wanted to manage his own forests, but he was told he had got to have one, and he said that he ought at any rate to be given three lakhs a year. That is what he asked, though he thought that he was very much undervaluing his forests The lease provides for the whole thing for ever, at Rs. 10,000 a year, this lease of 1877 Now, Sir, the statement of the case does not disclose the circumstances in which those Agreements of 1864, 1871, and 1877 were obtained, but I cannot believe that *it can be right, on broad political* grounds, apart altogether from any legal question, that the Government should be exploiting this immensely valuable property of the State of Bashahr, its chief asset, for what is practically a song—Rs. 10,000 per annum Now that is the case, Sir, and it is a case that I can say definitely all these Simla Hill States feel very deeply is utterly unfair. That is the gist of the thing, Sir, and I do not think that it is worth while going into details of the papers.

Chairman: We shall read those afterwards.

Sir Leslie Scott: Yes. That is the main fact, that Government are contending that they have the right to keep those forests for Rs. 10,000 per annum for ever.

Then, Sir (page 2199), you will see the case of Baghat State. Complaint was made by the Divisional Forest Officer that a sale of land was "being indiscriminately carried out" by the Ruler of Baghat (*vide* letter No. 475/G, dated 15th February, 1925, to the Superintendent, Hill States, Simla) The point of this case is that the Forest Administration claim the right to control all these Simla Hill States by order, and I think it would be best just to take one or two of the documents here very shortly, to bring it to your attention. Exhibit "G": This is from the Divisional Forest Officer to the Superintendent of Hill States (No. 475/G, dated 15th February, 1925): ". . . On my inspection of these compounds I have noticed that the sale of land is being indiscriminately carried out by the Chief, which is not permitted under the rules regulating Forest Conservancy in the Simla Hill States, Punjab Government Notification No 125, dated 5th February, 1904" You get the Rules under Exhibit "J." That letter was forwarded (No. 643, dated 17th February, 1925, from the Superintendent, Hill States, Simla) to the Ruler of Baghat, and he says (No. 410, F.O, dated 7th March, 1925) he has never seen these Rules And a copy was sent to him (*vide* letter No 1170, dated 21st March, 1925) He did not even know the rules to which he was subject. You see they are in the nature of mandatory rules, claiming the power to give orders "1: The forests of each State will be demarcated by the State in accordance with the proposals of Mr McIntire within such period as will be communicated to the State by the Superintendent, Hill States 3 Should the above provisions not be carried out by the States within the period prescribed, the work will be executed under the direction of the Superintendent, Hill States, and the cost thereof will be recovered from the State 5 In October of each year the Forest Officer will prepare a plan of operations, based on the provisions of the working plan 7 When sanction to fell any trees has been obtained, the State concerned will apply to the Forest Officer to have them marked The Forest Officer will, so far as he is able to do so, mark the trees himself, otherwise he will give directions when and how the trees are to be marked. . . In forests which have been demarcated the following acts will not be permitted" and then it goes on to describe the various acts "13 Each State shall keep up the Boundary Registers and also a Register showing trees sold, trees given to Zamindars, and trees felled for the use of the State" They are all mandatory in character, these Rules.

Exhibit "K" is the Rana's comment after perusal of these Rules (No 16, F O., dated 28th April, 1925, to the Superintendent, Hill States) " . . I have gone through these Rules and Regulations myself, and I am at a loss to find whether these Rules can be applied at a time when the State is not under management and the Ruler enjoys full powers In my opinion these Rules can hold good only when the Ruler is a minor, and the State is under the direct management of the Superintendent, Hill States. If, in any case, you disagree with me

in this respect then kindly send me the copies of documents which may show how the supervision of the State Forests came into the hands of the Divisional Forest Officer, and whether these Rules were framed with the consultation of the States." And the answer is Exhibit "L" (No. 1761, dated 8th May, 1925): " . . . I would mention that both the Government of India and the Punjab Government attach the greatest importance to forest conservancy in the Simla Hills, and these Rules have been specifically approved by Government, and are applicable to all the Simla Hill States, whether under management or not." Then Exhibit "O" (No. 2120, dated 2nd June, 1926, from the Superintendent, Hill States): "In reply to your letter No 103/F.O., dated the 9th May, 1925, I write to say that the words quoted by you 'in executive matters too you will be both the law and the prophet' are not from any Government Orders on the subject but from Mr. Abraham's speech at the time of the investiture ceremony at Solan. The reservation of forest control is invariably omitted when the question of powers is being discussed . . . "

You see the line they take, Sir, and the submission they make. Here again is a question of general interest. In these commercial matters there are innumerable questions of the kind where it is perfectly obvious from certain points of view that some kind of system for the development of forests in contiguous jurisdictions on one uniform plan may be highly desirable. All the States say is "You have no right to dictate to us and give us orders; recognise our rights, treat us as we are, as possessed of certain sovereign powers, and then we will be reasonable and will make arrangements of a reasonable kind for the future, but you cannot dictate to us."

Then the next case, Sir, is that of the Sirmoor State (page 2215). Would you just turn to the little map of Sirmoor that you had yesterday. You will see at the extreme north-west part of the area surrounded by the red line which is the present State of Sirmoor, a river called the Girree River. It starts in the mountains to the north of that apex, that point of the State which points to the northwards; it goes down between the red and the green line there on the north-west, comes into the Sirmoor territory just by the word "Girree River" and goes right across the State in a south-easterly direction, and there falls into the Jumna where the State adjoins Kiarda Dun. In order to irrigate the State the Ruler in 1865 constructed a canal, but it was badly constructed from an engineering point of view and fell to pieces. In 1901 the State applied to Government for an experienced canal engineer to advise them with a view to making a new canal, but the Government would not lend an engineer so the State did it themselves, and submitted the plan to Government (letter No. 113 dated 4th April, 1905, to the Delhi Division). The Government kept the project in their hands for a year and then wrote (No. 144 P. dated 17th March, 1906, from the Commissioner, Delhi Division) to say that they could not allow the scheme because they themselves wanted the water for their own canal irrigation in British India. The State complains that that was an untenable claim, that the Government had no right to forbid Sirmoor to use its own water merely because there was a lower riparian owner that wanted to have the water itself. It is a lower riparian owner because it is on both banks of the Jumna and the Girree flows into the Jumna, as you see

from the map If you will glance at one or two of the Exhibits you will see what took place Exhibit 2 (letter No. 144 P, dated 17th March, 1906, from the Commissioner, Delhi Division): "As every drop of water that the Western Jumna canal can carry is so urgently needed for the precarious tracts of the Hissar District the Government is unable to countenance the execution of any project which would divert any portion of its supply to a tract like the Kiarda Dun, where the need for canal irrigation is comparatively so much less" That if I remember rightly, Sir, is to the south of Patiala

Chairman: Yes, from there to the Bikaner Desert

Sir Leslie Scott: I do not dispute that that district does want water, but that is not a sufficient reason If you look at Exhibit 3, the Ruler of Sirmoor puts his answer in his letter dater 20th February, 1907—(no reference quoted): "It is obvious from the maps which form part of the project that the proposed canal, if constructed will run through a part of the country where mostly there exist no wells, no tanks no springs and where the cattle and people both have to go either to the Giri itself or the Jumna to drink and bring water, and this puts them to great inconvenience and interferes greatly in their agricultural work, particularly during the hot months when the water is needed most The general question of riparian rights in streams is governed in the Punjab by well-known custom Upstream riparians have first claim to the water subject to some extent to any claim which may have accrued below For instance, the Sirhind Canal was constructed notwithstanding prejudice to irrigators from the Sutlej in Montgomery, Multan and Bahawalpur The Bahawalpur State takes canal from the Indus without consulting Sind . . ." After that protest, ten years later, the Government say they can do it on terms which make the proposition perfectly futile and useless. Exhibit 4 (No. 119 P., dated 15th January, 1917, from the Commissioner, Ambala Division) is: "In continuation of my letter No 4 P., dated 4th January, 1916, regarding the construction of a canal from the Giri river to irrigate the Kiarda Dun forests, I am directed to convey the permission of His Honour the Lieutenant-Governor, Punjab to the construction, by the Sirmoor Durbar of the canal as proposed on condition that it shall have a maximum carrying capacity of 30 cusecs, and that it shall be closed entirely for ten days in the month during each Kharif (April to June) and early Rabi (October to November) and for fifteen days a month during the late Rabi (December to March), except when there is a surplus at the heads of the two Jumna Canals at Tajewala." Then he says that he is sorry they cannot lend an engineer from the Irrigation Department. You observe that that is a totally useless quantity of water, and the State would be denied its use just when it was wanted. Then, in March 1919, the Raja writes (No. 25 E, dated 20th March, 1919): "I have had the pleasure to receive your letter No. 119 P., dated the 15th January, 1917, but owing to the war I felt diffident to take your time and that of the Government when the attention of everybody was centralised towards the premier call of war measures. This will account for my silence up to now. Thank God the War is over I therefore, take this early opportunity to ask the [illegible] favourable consideration by the Government of what foll[illegible] The needs for the construction of a canal in the Doon and [illegible]

right and claim to make use of the Giri River water which passes through Sirmoor territories have already been explicitly and in detail enumerated, in my letter No. 1170, dated 20th February, 1907. It is hardly necessary, therefore, to repeat them here. (2) The canal project, which was originally sent to your office for professional opinion as to its feasibility, under cover of this office letter No. 113, dated 4th April, 1905, was drawn up by Mr. A. G. FitzSimons, C.E., late Irrigation Engineer of the Punjab Government. Regarding the volume of water, he has particularly laid stress on the fact that taking measurements at the Winter level (at the head works of our proposed canal) it is about 700 cusecs, and consequently an uninterrupted flow of 30 cusecs in the proposed canal throughout the year is immaterial to the flow of the Western Jumna canals in the British territory. . . . . . . It is obvious that the full flow is allowed only from July to September, which synchronises with the rainy months, when the canal water is neither in requisition nor serves any purpose, and that a total stoppage is demanded during a period when the water is most needed for irrigation purposes." He points out the futility of it, and says he would rather abandon the project than have it carried out like that, that is, provided the Government is prepared "to compensate us liberally for the loss that would accrue to Zemindars by their being deprived of irrigation facilities, and consequently to the Durbar in the shape of diminished income from land tax, and for the expenses which have already been incurred on the preparation of the project, and those which will have to be met in future on sinking wells and setting up other similar works for the supply of drinking water for human beings and cattle." What he is saying there is this: "I, as upper riparian owner, am entitled to this water. If you want to claim the whole use of it, it ought to be on the terms of your paying me reasonable compensation for my giving it up". I venture to submit that is a perfectly proper attitude for him to take up, both legally and politically.

The Government answer (No. 4433 P., dated 19th June, 1919, from the Commissioner, Ambala Division) is really extraordinary. It is Exhibit 6. They say that the conditions attached "to the permission accorded were based on the undesirability of reducing the supplies in the Jumna River to the whole of which Government claims to have acquired a prescriptive right." That is to say, the Government claim to have acquired a prescriptive right to the whole of the water delivered into the Jumna stream by the Giri River. I cannot gather on what ground it could be put. Then the Ruler of Sirmoor evidently consulted Counsel. He says so in his letter dated 7th April, 1926, to the Governor-General in Council—(no reference quoted)—Exhibit 7, paragraph 2. He challenges this claim of prescription and quotes some cases. I will not trouble to read them now. In the middle of paragraph 4 he says this: "I wish to point out that if your Irrigation Officers were to take measurement, they would find that in limiting my claim to 80 cusecs"—he said he wanted 80 and 30 was not enough—"I have greatly reduced the claim to which I am entitled. The Western Jumna Canal draws away 6,430 cusecs of water from the river, which it does not ordinarily return to the river." Then he points out: "Several hundred cusecs of water pass through my State, and under the established law I am entitled to the free use of this

water, the test being not the quantum of water used, but its reasonable use, of which there can be no question, seeing that both the British Government and myself are to use the water for the same purpose, namely, irrigation." Then he puts forward some legal reasons about prescription which I am not going to trouble you with. Then in paragraph 9, he says. "I beg that if the Government thinks that its rights conflict with its duty as the Lord Paramount and Protector of my State, it may refer the matter to an arbitration as provided by the rules on the subject" That is Resolution 427 of 1920 That is the Sirmoor case about the canal

On the subject of the impediments in the development of the natural resources of the State, you have four cases one after the other The first is under the heading of "Railways"—that is the Nawanagar case. Then you have two cases about "Forests" and then you get the canal case

I pass now to "Irrigation" which is heading A (b) 10, the case of the Bhor State This is quite a different type of case The Government wanted to make large reservoirs inside the State of Bhor. Bhor is a small State The total area of agricultural land taken away by these reservoirs was considerable Bhor State said "It is not enough merely to give me pecuniary compensation You have no right to take this land, but I recognise the importance of the project and I am prepared to meet you. But you ought to give me land in return This land yields my State substantial revenue It supports a large number of my people who make their living out of it, and you ought to give me land in return" The story told is that the Government refused to give land They took the land that they wanted for the reservoirs without the formality of getting the consent of the State The Government decided in the year 1868 to build a dam at Khadakvasla, in the Poona District, on the River Mutha The dam was completed in the year 1871. An area of 171 acres and 37¾ gunthas from seven villages of Bhor was originally submerged in the lake, and the State was required to enter into an agreement whereby State land carrying an assessment of Rs 721/4/0 had to be surrendered to the Government In exchange the State was given other pieces of land with a total assessment of Rs 621/5/0 only It may here be urged that the Government had no right to build such a dam without first obtaining Bhor's consent, for the Government engineers must, or ought to, have known that the Bhor land would be submerged Later on, for the purpose of another irrigation scheme, which included the construction of two dams, one at Bhatghar, on the River Yelvandi, and the other at Vir, on the River Vira, the Government required from Bhor State the surrender of two parcels of land, one 4,948 acres and 12¾ gunthas in area and carrying an assessment of Rs.5571/7/- and the other 1,210 acres and 1¼ gunthas in area and bearing an assessment of Rs 765/10/- only The State was unwilling to lose such a large and fertile portion of its territory, it represented its objections to the Government (No 96, dated 25th August, 1870, to the Political Agent, Satara) and requested the Government to see "that unless a resolution for the compensation is passed orders will not be issued to commence the work" In this letter, the State definitely asked *inter alia* that "after the boundary marks of the lands that would be submerged are fixed and the classification of lands is made

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after surveying them, British villages adjoining the State boundary should be given in exchange, yielding revenue equal to that of the State lands that would be submerged, and sufficient also to make up the loss that would be incurred owing to the loss of the land of Vahivatdars, Inamdars, and Watandars" I believe that the Vahivatdars in the Bombay Presidency are the same as the Tehsildars elsewhere Vahivatdar rent payers are rent-free holders. I do not know what Inamdars are Three considerations moved the State to adopt this attitude First, that cash payment is not enough compensation for the loss of dignity, magnitude and jurisdiction, along with the loss of land revenue and other incomes which result to a State from a surrender of territory Secondly, that the very existence of a small State is endangered if inroads be frequently made on its territory. Thirdly, the displaced cultivators had to be provided for.

The Government ignored Bhor's specific demands, and the Political Agent by his letter No. 73 of 31st May, 1872, proposed a money compensation Bhor immediately protested and pressed for lands in exchange, *vide* his letter dated the 15th July, 1872 (No. 174) Worse still, the Government went on with the construction of the dams. The question of giving effect to Bhor's demands was kept pending for 14 years, when orders were passed by Government in their G.R. No. 8189, dated 20th November, 1882, to the effect that it was not possible to compensate the loss of the Bhor State by grant of territory. The protests of the Bhor State against this order were of no avail, and in the year 1897 the State was made to enter into a formal agreement By this agreement the Government also set aside the claim of the Bhor State to jurisdiction over the submerged area, which was based on the ground that the State not having been given any territory in exchange for the submerged area, its jurisdiction on its own land remained as before. This claim was summarily rejected, and they were told to sign at once The State's arguments are put very clearly, and that is sufficient to give you seisin of the case, I think.

Patiala (page 2234) The Sirhind canal was made under an agreement with Patiala in 1873, Article 10 of which says " Each State will defray the entire expenditure on its own *Rajbahas.*"

Chairman: Distributaries.

Sir Leslie Scott: Yes, distributaries; which will be designed (unless otherwise mutually agreed upon) as far as possible so as to provide separately for the lands of the several States, and will be specially assigned to the States by the British Government which will determine all doubtful points relating to this assignment In 1882 when the canal was under construction, it was discovered by the Patiala State that *Rajbahas* or separate channels which would, like those of the Patiala Branch, irrigate Patiala territory only, could conveniently be constructed in the Bhatinda Branch, and accordingly a request (No 356, dated 13th July, 1882, to Canal Agent, Cis-Sutlej States) was made to the Punjab Government that these *Rajbahas* be constructed according to the suggestion of the Patiala State at the expense of the State In 1883, this proposal was considered by the Punjab Government as entitled to favourable consideration and it was stated (No 451, dated 24th March, 1883, from Canal Agent, Cis-Sutlej States) that effect would be given to the proposal of the Patiala State if it was found feasible to construct the *Rajbahas.* It was also intimated

that the suggested scheme would entitle the Patiala State to one fourth of the supply in the Bhatinda Branch or to one-eighth of the supply in the combined Abohar and Bhatinda Branches. In consideration of the above supply the contribution of the Patiala State was fixed approximately at Rupees twenty-eight lakhs The Council of Regency at once undertook (No. 669, dated 28th December, 1883, to Canal Agent, Cis-Sutlej States) to provide this amount and distinctly stated that the same terms would apply in this case as had been agreed upon in 1873. The *Rajbahas* were constructed and aligned as Patiala State had desired, but they were not made over to the State, although the condition on which the promise of 1883 rested was fulfilled, namely, that the desired alignment of the *Rajbahas* was found feasible No action was taken by the Patiala State to recover possession and control of the *Rajbahas* for nearly 20 years In 1905, however, a *Murasla* from His Highness the Maharaja Dhiraj was sent to the Political Agent (dated 18th December, 1905, no reference quoted) demanding the transfer of the distributaries to the State in accordance with the understanding arrived at in 1883 A similar request was made by the Nabha State and both these requests were similarly disposed of by the Punjab Government The reply to the Patiala State (No 1124, dated 26th March, 1906) pointed out that it was not possible to meet the wishes of the Patiala Government as technical and administrative difficulties would attend any change in the then existing system It is to be noted that no attempt was made by the Punjab Government to dispute or deny the claim of the Patiala State to obtain possession of these *Rajbahas* The Patiala State were dissatisfied and put forward their reasoning (dated 2nd March, 1913, no reference quoted) and pointed out that no compensation had been paid to the State for the lands for these *Rajbahas* because it was distinctly understood that these *Rajbahas* would be eventually handed over to the States And then the answer of the Political Agent (No. 1522, dated 9th May, 1913) pointed out that the agreement of 1873 never contemplated that distributaries of British Branches lying in the Native States should be owned by the States,—I thought it said it—and that the Patiala State did not appear to have any legal or moral claim to purchase the minors. That the Government of India ran considerable risk of the Sirhind Canal proving a failure, and since it had turned out a financial success, to grant an increased share in the canal would be to sacrifice gratuitously the results of the Government of India's enterprise which it was its duty to retain for the benefit of its own subjects — That is rather naive —" If the thing had been a failure we would have allowed you to take the *Rajbahas* As it is a success we are going to keep them " Nothing further could be done

The next subject is " Income Tax " heading A (b) 11 This again is Bhor State I speak without much knowledge of the Indian income tax legislation, but I understand that there is a provision that the tax is not assessed upon agricultural revenue, revenue out of land

Chairman It is not assessed on agricultural income.

Sir Leslie Scott Yes, agricultural income There are two points here One is as to whether a Ruler of a State is entitled to immunity as a Sovereign, and the other is as to whether the Government were bound to carry out an agreement they had made with the Bhor State to pay him a certain annuity in money without deducting from it

anything, whether for tax or anything else There is a third point, as to whether the annuity in question arose out of land within the meaning of the Indian Act, but it is quite a subordinate point of no general importance. The facts are very short. The preamble of the Treaty of 1830 between the Pant Sucheo of Bhor and the British Government provides that the British Government has freely bestowed and made over to him the whole of his possessions as formally held up to the War—that is the War of 1817 I think—with the exception of his possessions within the territory of the Nizam The possessions of the Pant Sucheo included among others his rights to receive "Sahotra" (that is six per cent. of the revenue) of certain villages in British districts as well as in States like that of the Nizam. The Treaty does not guarantee the Pant Sucheo's right of "Sahotra" in the Nizam's territories, but his rights of "Sahotra" in British Districts and in States like Miraj, Sangli, etc, have been so guaranteed and enjoyed to this day without any objection. Since about 1885 dues received on account of "Sahotra" in British districts have been subjected to the levy of income tax on the ground that they are allowances paid out of general revenues—which, I suppose, means that the British *Taxing Authorities said that the income did not come within the* exception of agricultural income. Bhor protested and said that the levy was against the spirit of the terms of the Treaty, and the payments due to him, though subject to variation in relation to the rise and fall in the revenue of the British districts in question, were not subject to any other deduction in the nature of a tax. There are two separate questions here First, that the "Sahotra" clearly was receivable by him as Sovereign in pursuance of the Treaty, and the Crown, as party to the Treaty, undertook to pay him "Sahotra" and would not therefore be entitled to deduct a tax which they themselves had imposed by legislation. Secondly, that it was land revenue. There are two other specific sums of 400 rupees and 6,200 rupees They were provided for under Article 2 of the Agreement of 1830. Article 2 is: "The country producing revenue to the above amount of Rs.32,340/1/9 has thus been transferred, in full sovereignty, by the Honourable Company to the Pant Sucheo, in lieu of revenue belonging to that chieftain, amounting as above, to Rs.32740/1/9, and the balance of Rs.400 is to be paid annually in cash to the Pant." It follows that if an interchange of territories of equal revenue had been made Bhor would have got land yielding Rs 400 instead of a cash payment, and got the land in full sovereignty too If you look at the Treaty *you will see quite clearly that it is an exchange of land plus an* annuity to balance, and my submission is that for three reasons he was entitled to be free of tax: (1) it is an annuity received by him under the Treaty as Sovereign; (2) it was a specific annuity of a fixed amount which the Government undertook to pay, and they could not deduct anything from it; as they had undertaken to pay Rs.400 they could not pay less, (3) that it came out of land within the meaning of the Income Tax Acts—if that has anything to do with the case, of which I have my doubts

The next case is Patiala (page 2249); that is another tax case and can be put very shortly. Patiala has Vakilkhanas at the five following places: Ambala, Simla, Ludhiana, Ferozepur and Hissar, diplomatic posts of the State. They were tax free until quite recently, but in 1922 the income tax collector claimed income tax on their annual

value and the Government ruled (No 4035/5/6, dated 23rd May, 1922, from the Secretary to the A.G.G) that it had to be paid My submission is that the sovereignty rule applies clearly there, and that both because they are owned by the Sovereign and because they are used for diplomatic purposes they are free from tax. There are two or three other legal reasons given by the State which do not, I think, affect the general questions that are before you, and I shall not trouble about them; but whether that is right or wrong in law, I submit that this is clearly a case where Government, in exercise of its powers of discretion under the Income Tax Acts in British India, ought to say that no tax should be paid, on the ordinary grounds of diplomatic courtesy.

Now I come to the "Mints" Sir, heading A (b) 12. the case of Cutch (page 2259). I am not going through this this afternoon for the very definite reason that to understand this case requires very close reading all the way through—at least I found it necessary, it would take me too long within the time at our disposal this afternoon to do it, but I should be glad if the Committee would just mark it to read carefully as I regard it as an instructive case It is really a question of exchange, it has nothing to do with the Mint directly, only indirectly. Treatment of the minority administrative orders where the Government had no power to make orders, conduct of the Government adapted first one way and then the opposite way, according to the movement of the exchange, in order to make money at the expense of Cutch—those are the points

Then "Banking" Sir, heading A (b) 13 (page 2279) This has very little to do with what one ordinarily thinks of as connected with that word. Various payments had to be made to the State of Gwalior by the Government in respect of various Agreements and Treaties—salt, railway loan, interest on loans and so on The agreements called for payment at Gwalior. The Government insisted on paying either at Indore or at Agra The cost of transporting the money in safety from those places—I think it was mostly Agra—to Gwalior was considerable The State said "This is not fair because you are putting upon us a cost which reduces our net receipts substantially" Now that went on over a long series of years and the Government only gave way after a very long time (*vide* letter No 1432 G , dated 17th May, 1920, from the Resident). It really illustrates how difficult it is for the States sometimes to get their financial rights adjusted in accordance with their legal position or their contract or whatever it may be

Chairman· That is not a peculiarity confined to any one country I think.

Sir Leslie Scott· No, of course it is a phenomenon which has been observed in other parts of the world, but the point is that they have got no Court to go to If they had a Court where these matters could be easily disposed of the difficulty would be obviated I do not propose to read the details of that

There is another Gwalior case under the head of "Materials for buildings and roads"—heading A (b) 14 (page 2293) The British authorities at the Residency and cantonments in the State of Gwalior claimed a right to have such road material out of the quarries of Gwalior as they liked, free of all charge, free of all royalty, free of all duty, payable to the State There was a long dispute as to wh

this claim was right or wrong The Durbar had to give in to a considerable extent more than once; but the same claim crops up at different dates in respect of different roads or different buildings; and the Government of India (*letter No 1740, dated 17th February, 1906,* from the Resident) took a course, I suppose to facilitate making good such claims by its subordinate officers, which, in my submission, it had no right to do Exhibit 13: "A Durbar should not charge royalty for ordinary materials quarried from its land by the Public Works Department for roads and buildings" Why not? You see what the Durbar say in letter No 248A, dated 8th July, 1907, to the Resident: "Since the instructions in question of the Government of India have been communicated to the Durbar, demands for excavation of materials from their lands for use beyond their territorial limits have been made in such rapid succession as will appear from some of the marginally noted letters received from your office alone, that it is apprehended that if they continue in their present form, they will, besides creating an unjustifiable lien, put a drain on the material resources of the State without bringing in anything, whether in the shape of profit in money or convenience to the Durbar's subjects" They further complained that they were not even consulted previous to the formulation of this proposition by the Government The questions which the Durbar ask are these: (1) Are the Government of India justified in claiming exemption from duty—that is royalty—on materials quarried in State territory for Imperial roads and buildings, particularly in view of the fact that the Durbar levies duty on materials used for their own buildings (2) Have the Government of India any right to pass such orders as were given on the occasions above mentioned? Do they not transgress the internal autonomy of the State? (3) Does not such a policy of the Government of India act as an unfair and unauthorized drain on the economic resources of the State

I do not think I shall trouble to pause about the Indore case (page 2303), it is one of these minority cases It was a question of a mill.

Then we come to the general heading B (a) 2 which is entitled: "Inequitable burdens imposed upon or allowed to be borne by States."

Chairman That is dealt with in the Introduction, is it not

Sir Leslie Scott: Yes, incidentally it is. Now take this case of Barwani State, we can take it shortly Some time after Khandesh was ceded to the British Government by the Treaty of Mandsaur in 1818, the Bhils of the Province were enlisted in what was known as the Khandesh Bhil Corps This corps was organised with the object of protecting the territories of the British Government and the Indian States from the depredations of the unruly element in the Bhils. At that time it was also thought that by forming a corps of the Bhils, the tribe could be persuaded to change their mode of life and to settle down as peaceful farmers. Later on (in 1835) a similar corps was formed in Malwa also; and Indore, Gwalior, Amjhera, Jhabua and Dhar, in whose territories the Bhils formed a large portion of the population, were moved to contribute towards the maintenance of the corps. The Bhils of Barwani were not of the lawless type found elsewhere. The leaders of the few Bhils that lived in Barwani were given fixed stipends in cash or land, and what is termed a "*Sukdi*" or grain contribution by the cultivators. The leaders were made Naiks and each Naik was allotted a portion of territory within which he

was held responsible for any crime committed. This arrangement continues up to to-day in certain hilly parts of the State, and has been remarkably successful in checking the criminal propensities of the tribe. In the troubled times of the Mutiny it seems that the British Government had ordered that their sepoys should patrol the territories of the friendly States under the supervision of the Political Agents. When peace was restored in 1858 Maharana Jaswant Singh Ji was invested with full powers. Then it was proposed to withdraw the sepoys, and the Maharana was asked to enlist his own sepoys and to continue the Naik system as heretofore This request, coupled with the withdrawal of Government sepoys, is a clear proof showing that the British Government considered the Naik system quite sufficient for the maintenance of peace and tranquility in the State In 1899, during the minority of the Ruler, the question of the removal of the detachment of the Malwa Bhil Corps stationed in Barwani was moved by the Political Agent, Bhopawar, and after some correspondence the Government (No 5917, dated 23rd September, 1907, from the Political Agent, Southern States of Central India) did decide to remove it, though with the proviso that "a detachment will always be available for Barwani should circumstances demand their presence" The State was also asked to make necessary arrangements for policing the area formerly patrolled by the Corps At this time the State should have been released from the obligation to pay the annual contribution of Rs 4,000 (Hali) But this was not done and the Ruler, being a minor, could not protest The result is that that contribution continues to be paid to-day Since then the contribution has been a mere imposition, for practically no service has been rendered to the State in return for it The detachment was called on once in 1919 but it took over a month and a half to arrive. And when it did arrive and was posted in the State, its behaviour was not very good (vide letter No 178, dated 6th November, 1919, to the Political Agent, Southern States of Central India) That is the position there, I will not trouble to read the Exhibits

The next case is Gwalior (page 2315) There are two Gwalior cases here, and both of them illustrate the practice, or even the habit, of the Government of India when it is finally convinced that some imposition made by it is improper and ought not to be continued, to avoid any admission that it has done wrong and also to avoid the necessity of refunding the money that it has wrongly received in past years The Government of India (No 4709/2542, dated 23rd September, 1895, from the Resident) called upon the Durbar in 1895 to bear, like the Provinces in India, the charges on account of the maintenance of Police Forces on Railway Lines in the State during construction and after their being opened for traffic The principles underlying the demand were enunciated as under (1) That as in British India the Supreme or Local Government are not exempted from the duty of maintaining law and order on any road or in respect of any property in the territory through which a railway passes, so in the State, the advent of a railway does not exempt the Durbar from similar responsibility (2) For the same reason the fact that jurisdiction necessary for the discharge of such duty is, for the sake of convenience, exercised by the British Government, does not exonerate the State which ceded jurisdiction from liability to pay for

the services rendered (3) The duty and cost of dealing with offences committed within the railway limits have been accepted by the Government, and the duty and cost of keeping order at the railway stations and watching standing passenger trains, goods sheds, goods trains and railway buildings, by the Railway Administration, and the distribution of charges to be incurred under both the heads is to be effected in the ratio of seven to three between Railway Administration and the Government. The Durbar made a representation (No. 896, dated 19th July, 1906, to the Resident) in which they urged: (1) That the decision regarding apportionment of charges arrived at was one-sided and inequitable. (2) There was no analogy between the Supreme or Provincial Governments of British India and the Durbar's Government, for while in British India the Provincial Governments received all the judicial income derived from fines and court fees, etc, by the administration of law and justice, the Durbar receive no such income from the areas covered by railways in their territories. This income also is taken by the British Government simply because they have obtained cession of jurisdiction over their territories from the Durbar, and treat their territories for all intents and purposes as if they were part of British India. As a result of this representation the Government of India (No. 10084, dated 10th November, 1906, from the Resident) absolved the Durbar from the liability imposed upon them for police charges, but yet refused to give this decision retrospective effect. The real and proper remedy was to return to Gwalior its jurisdiction over Railway lands This case is an illustration of what I said, Sir.

The next is another Malwa Bhil Corps case: In 1803 the Durbar, by the Treaty of Sarje Anjengaon (Aitchison, Vol. IV, page 42) ceded territories with an annual revenue of 1 crore and 47 lakhs of rupees. The British Government bound themselves to provide a subsidiary force, 6,000 strong The details of the services, etc. are set out in the Treaty of 1804 (Aitchison, Vol IV, page 53.) They are comprehensive enough to cover the suppression of plunderers. Then in 1817 there was a fresh Treaty (Aitchison, Vol IV, page 64) under which the Maharaja had to allot a force for the suppression of the Pindaris and to assign funds aggregating 9 lacs for its regular payment through the Government of India. The arrangement was to last for three years only, but even after the close of the Pindari War the force was maintained, though at a reduced strength, for an indefinite period by the Treaty of 1820 (Aitchison, Vol IV, page 74.) After the death of Maharaja Daulat Rao the arrangement had to be renewed by Maharaja Jankoji Rao by his engaging " to defray all the charges of a force to be commanded by British officers and constantly stationed within His Highness' territory for the protection thereof and the preservation of good order therein " (Aitchison, Vol. IV, page 78) In 1835 the Political Agent at Gwalior informed the Durbar that the expenses would be roughly Rs 4,443 a month, and that Indore, Dhar and Amjhera were participating in the measure, and therefore enquired if the Maharaja Scindia would join in the scheme and contribute any amount towards the expenses, as it was optional and purely a matter of His Highness' wish and pleasure. The Durbar replied that there was no trouble in their territory anywhere except Godhra Punch Mahal, where proper arrangements had been made for the suppression of the trouble. Then in 1838 the Durbar were informed (20th May, 1838, no reference quoted)

that the measure had been sanctioned by the Government of India, with the approval of the Home Government, and the Bhil Corps would be raised at an annual cost of Rs.50,000, out of which the Government of India would pay Rs.18,000; the remaining sum of Rs.32,000 was to be equally shared by Gwalior, Indore, Dhar and Amjhera—that is Rs 8,000 each. The Durbar replied that since the contribution was demanded in spite of their previous communication, they would pay it in their desire "to please His Excellency the Governor-General" and expected that the corps would go and put down disturbance in Malwa on requisition by local officers Six years after the Treaty of 1844 (Aitchison, Vol IV, page 78) was concluded by the Government of India with the boy Maharaja, by which territory and tributes worth 18 lakhs a year were assigned by the Durbar for the maintenance of a contingent force, in view whereof the Government undertook to protect the State from aggression and turbulence, both external and internal All the same the Malwa Bhil Corps' contribution of Rs. 8,000 a year was continued. In 1855 the Durbar protested (letter dated 27th March, 1855, to the Resident) against the continuance of this levy in face of the assignments of 1844 In 1858 the A G.G (No 284, dated 20th May, 1858) reported to the Government of India "that the Durbar could no longer be expected to continue their contribution of Rs 8,000 in the face of the cession of 18 lacs made by them as the price of the military protection of every sort, and that the contention of the Durbar was unrefutable" But while he proposed the exemption of Gwalior from the annual payment of Rs 8,000 a year he subjected Amjhera, which had hitherto been paying Rs 4,000 a year, to an enhanced contribution of Rs 20,000 Owing to the Raja of Amjhera's rebellion in the Mutiny of 1857, Amjhera, which was a tributary of Gwalior, was allowed to lapse to the latter—that is, to Gwalior—at about the same time as the redistribution of the contributions had been decided upon

Now, the net result of that, putting it shortly is this they said it was quite impossible to continue the contribution from Gwalior of Rs 8,000 as it would not be fair paying so much under the Treaty of 1844, and instead of that they demanded Rs 20,000 because they assessed it on Amjhera and passed the demand over from Amjhera to Gwalior It must also be stated that while the Government of India admitted the Durbar's right "to act as you please as regards the disposal or management of the said State (Amjhera)" they also made it known to the Durbar that in addition to the usual tribute, which according to Treaty has been assigned to the Government, an annual sum of Rs 40,000 for the maintenance of Malwa contingents and the Malwa Bhil Corps and a provision for the widow of the late Chief will have to be defrayed from the revenues of the Amjhera State Aitchison says that previous to the Mutiny Amjhera contributed Rs 4,000; Scindia now contributes Rs 20,000 on account of Gwalior and Amjhera The Durbar protested in 1860 and urged the discontinuance of the levy, but the Resident returned the Durbar letter with a hint that the letter was not proper and that suitable replies should be sent in after fully considering the communication of the A G G This only meant that the question might not be opened Considering the troublous times of the mutiny, and the atmosphere of suspicion and distrust that followed it, it is not strange that the Durbar quietly submitted and did not press the matter further In 1909 the question was

re-opened by the Durbar (No. 7390, dated 14th April, 1909, to the Resident) They pointed out that the levy was wrong in principle and in contravention of the Treaties subsisting between the Government and the Durbar. And after dealing with the Durbar's large contribution in the past, both in land and money, and the Government of India's obligations to protect the State under the provisions of the Treaties, the Durbar pointed out that the force of the Durbar's contention was fully admitted in 1858, with the result that the contribution of Rs.8,000 was allowed to be stopped. The same reason applied to the new levy of Rs 20,000 a year on account of Amjhera. Even before 1858 Amjhera, as the Durbar's tributary, should have been regarded as being within the ambit of the protection purchased by the State for all its territories and recorded in Treaties It should not have been laid under any other contribution direct or indirect But at any rate Amjhera was now not even a tributary estate, it was an integral part of the State and directly administered by it Therefore to speak of a contribution by Gwalior—*ex hypothesi* not liable—on account of Amjhera, which was a part of Gwalior, was, so to say, a contradiction in terms Then in 1925 the Government gave way (Resident's letter No. 384, dated 20th February, 1925) but the comment is that though the contributions then ceased, no offer was made to refund all the payments which should never have been exacted The Durbar contend that this burden, which was imposed upon the Durbar in spite of their protest, was in disregard of the Treaties subsisting between the Government of India and the Durbar Such cases force the question · How is the State to secure from the Government of India the discharge to the State of the obligations *of the Crown of which the Government of India is the Agent? Of* course, the answer is, there is no means except by a judicial tribunal of some sort of a compulsory kind to which both States and the Crown agree in advance I ask you particularly to notice the language of the letter from Government in which the concession is made Instead of saying frankly, "We recognise your right" they say this: "I am desired to state that the Government of India were well aware that this was a matter which His Highness the Maharaja had very much at heart and were anxious not to lose any opportunity which might offer itself for marking their appreciation of the pre-eminent war services of the Gwalior Durbar and their high esteem for His Highness They have accordingly examined the position in respect of this contribution, which was not free from difficulties from their own point of view, with particular sympathy and care, and have been pleased to decide to exempt the Gwalior Durbar from all liability towards the maintenance of the Malwa Bhil Corps with effect from the beginning of the next financial year It is remarked that in arriving at this decision the Government of India have attached considerable weight to the fact that the separation of the Gwalior Durbar from the Central Indian Agency, while control of the Corps remained with the Honourable the Agent to the Governor General in Central India at Indore, has markedly affected the position and diminished to a further considerable extent the admittedly slender connection which has existed between the Gwalior State and the Bhil Corps since the removal of the latter from Sardarpur and the recent reorganisation resulting in its concentration at Indore." In my respectful submission what is said to have markedly affected the position did not affect it by a hair's breadth, but left the matter exactly as it

was before, and that this is a characteristic letter in which the Government does not face the realities of the position as regards the right of the State, and wants to claim credit for having done a gracious thing when it was doing simply something less than bare justice because it did not return the money which it ought not to have had.

The next Gwalior case refers to "Liability for the expenses of the Convicts sent to Andamans, etc." Without looking at it at all I can tell you what it is The Government make the State pay for the expenses of maintenance of prisoners transported to the Andaman Islands, where the prisoners have been sentenced by courts exercising British jurisdiction in the State of Gwalior Upon that the Gwalior State says: "We do not want to give up any jurisdiction at all, we have done it very greatly against our will; we do not want it These people are, many of them, British Indian subjects, or some of them British subjects, and they are sent off there, and it is not fair that we should be asked to pay We do not want you to exercise the jurisdiction, we want to keep it ourselves, in which case we should have no expense, but to take the thing from us and then ask us to pay is unjustifiable"

Then Jaora State, Sir (page 2340) This again is the expense in respect of troops of which the State does not get the benefit Under Article 12 of the Treaty of 1818 (Aitchison, Vol IV, page 199) the Nawabs of Jaora were required to maintain, in constant readiness for service, a body of 600 select horse, and that quota of troops was to increase in proportion to the increasing revenue of the State Later on, in 1823, it was decided that the State should only keep 500 horse and 500 foot with four guns, and that the condition regarding the increase of units in proportion to the increasing revenue should be waived This agreement remained in force until 1842, and the forces raised by the Jaora Durbar were maintained out of the State revenues The selection of officers rested with the Nawab, and the force was called the Western Malwa Contingent In the year 1842 the Western Malwa Contingent was amalgamated with the Eastern Malwa Contingent furnished by Indore and Dewas, and the combined force became known as the Mehidpur Regiment The pay of this regiment and the selection and appointment of its officers were a matter of the British Government's discretion, and the Ruler's obligation himself to maintain a force was converted into a yearly cash contribution by him to the British Government of Rs.1,85,810 (Hali). On the 27th March, 1844, Sir Claude Wade, the then Resident at Indore, ordered that " under the orders of the British Government " one risalah of cavalry and a company of foot soldiers, out of the troops supported by the contribution of the Jaora Durbar, would for ever be stationed at Jaora for the proper and efficient control of the districts and for protection against plunderers and highwaymen, and that the arrangement would not be altered unless a mobilisation of the whole force was necessary in the event of a war That risalah of cavalry was stationed at Jaora for 12 years thereafter In 1856 it was removed, and the State was entirely depleted of the troops for whose maintenance a large sum was annually contributed by it The Durbar protested, and were told that Sir Claude Wade had no authority to give the order In 1857 there was a slight increase of strength Then the contribution was reduced to Rupees 1,61,810 (Hali Rupees), and there was another protest Then the Nawab died, and there was a minority The next Nawab did nothing In 1895, he was succeeded by the present Nawab, who was a

minor. Then, in 1896, the Political Agent in Malwa (No. 466, dated 20th March, 1896) conveyed to the Minister of Jaora the proposal of the Government to withdraw the detachment. The Minister (No. 260, dated 29th March, 1896) agreed to the removal only till the Nawab attained his majority The Nawab attained his majority and has been ruling his State since 1906, but still no portion of the troops is yet stationed at Jaora, although the sum of Rs.1,37,127, British coin, is being regularly contributed by the State You will bear in mind that those various payments are brought into account by Colonel Haksar in the General Memorandum I am not forgetting that aspect of the matter. What I meant by that observation is that I am not asking to have something twice over

Then the Jodhpur State (page 2347) makes the case that its undertaking to contribute, made by Treaty in 1835, ought to be treated as really performed by the number of troops which, under modern conditions, it has supplied voluntarily That is not a legal argument at all. It is purely political argument on broad political fairness and reasonableness. I appreciate that that again is subject to the comment that these troops are voluntary troops, and if they are to be treated as covered by the contribution in any way, then that contribution would have to come out of Colonel Haksar's account in the Memorandum

Then the next case is that of Rewa (page 2360). This is the question of the cost of paying for the Agency. In 1871 the Maharaja suggested that an Agency should be instituted for Rewa, not Baghelkhand, and offered to pay Rs 1,000 a month towards the cost, if necessary. The Government did not accept the proposal, but did constitute an Agency for Baghelkhand, including four other States besides Rewa. By 1906 the entire cost of the Agency (except the Leave and Pension contributions of the Political Agent) was being paid by the State, amounting to nearly half a lakh of rupees yearly They took the point up (letter No. 4006, dated 6th October, 1906, to the Political Agent, Baghelkhand) and the reply (No 1619, dated 19th May, 1908) was that the State had undertaken to pay the cost of the Agency. Of course, that is not correct. They had asked for an Agency at Rewa. They had never undertaken to pay anything for an Agency for Baghelkhand. The Agent had referred to certain papers and they replied (No. 2179, dated 6th July, 1908) that the only papers they possessed gave no indication of the fact that the Rewa Durbar had been required—or had agreed—to pay the whole cost of the Agency The Kharita of 1871 was silent on the point, and the Durbar asked that they might be supplied with copies of any agreement on the subject After the lapse of nearly four years, during which Rs.50,000 were going out of the State's pocket into the Government's pocket, the Government of India ruled (No. 4062, dated 12th December, 1912, from the Political Agent) that the annual contribution payable by the State should be reduced to Rs.12,000 a year, an amount which was taken to represent the Durbar's share of the cost of the Agency Surgeon and his establishment. In fact the Durbar were already paying the Agency Surgeon for his supervision of the State dispensaries, and meeting the cost of his establishment, but the Durbar agreed, presumably thinking they had better accept the reduction while they could get it, although the Government of India said that " The relief of the Durbar from the remaining Agency charges is conditional on their acceptance of this liability "—that is, for the Agency

Surgeon So they agreed The post of Agency Surgeon was abolished in 1921, and there has been no payment since then. Rewa says that this is an instance of the partial nature of the decision of the Government of India in a case where they were both party and judge. Now the first argument ignores the fact, already stated, that the Durbar were already paying a considerable sum separately for this purpose, a fact of which the Political Agent was uncomfortably conscious, as his demi-official letter (No 4063, dated 12th December, 1912) clearly shows The second disregards the fact that the offer of Rs.1,000 a month was not for the establishment of an Agency in Baghelkhand, but in Rewa, a distinction that any Ruling Prince will fully appreciate The whole disregards the fact that for 40 years, 1871 to 1911, the Rewa Durbar had been paying (on the basis of the Government decision) anything from Rs.10,000 to Rs.30,000 a year too much Lastly the form in which the "relief" is given is couched in words which make the gift of the relief conditional on the acceptance of a smaller burden Further comment is superfluous But it is not too late for the Government of India to make restitution by repayment There is a similar case in Sangli (page 2306) and that is the end of these main volumes.

Now I am afraid I have still to trouble you with some other matters You have been handed some additional papers, Mudhol and several others

Chairman It is hardly necessary to go into these at any length.

Sir Leslie Scott. The Mudhol case can be dealt with very shortly. I can put it to you very shortly.

Chairman. We shall read this volume.

Sir Leslie Scott · It will be sufficient if you will read it carefully. Then I will postpone my remarks about Mudhol till my speech.

There is another one which is not yet in form to hand in, but if you would be so kind as to look at it, you will see what it is. It is a memorandum sent in by the Simla Hill States of their grievances, which is signed by several of them. As the original signatures are here I think you ought just to see it. (Document handed in) There are twelve signatures That is the original document. I will see that you have copies of that

Would you just take the case of Rupal, which is so illustrative a case that, although I have not been in a position to put the actual documents before you, I venture to put it to the Committee, and they will make what allowance they think right for the absence of the documents. But we have a long telegram, which I have had printed (Exhibit E), from His Highness of Bikaner, who has been into the matter and tried to get the original papers of the case. He makes himself responsible for the statements in his cable

In 1914 a Bhayat was murdered in the territories of the Rupal State. As no clue of the culprit was discovered for a considerable length of time, and as the relations between the deceased and the Thakur Saheb were supposed to have been strained, the police directed their inquiries towards the Thakur Saheb, and as a result of their investigations the Thakur Saheb was arrested under the orders of the Government of Bombay. A Commission consisting of the Judicial Assistant to the Agent to the Governor in Kathiawar, with the Maharaja of Rajpipla and an experienced Political Agent as his colleagues was

appointed by the Government of Bombay. The reasons advanced by the Bombay Government for the appointment of this Commission were: (1) That as the Thakur Saheb was a Ruling Chief there was no court either in his own State or outside it which could try him under the ordinary law. (2) That the Penal Code of British India was not applicable in his case (3) That as the offence had been committed outside British India there was no court of law in British India competent to try the case It was stated that the enquiry was not a trial under the ordinary criminal law, but an enquiry which enabled the Bombay Government to deal with the case justly in the exercise of their right of interference in the affairs of Indian States in the Bombay Presidency on behalf of the Paramount Power. It was also argued that this right of interference was based upon the principle that the commission of crimes by a Ruling Chief in his State gives justifiable cause for discontent on the part of his subjects and is likely to lead to disturbances affecting the interests and responsibilities of the Paramount Power The Commission reported their opinion to the Bombay Government who accepted the verdict of the Commissioners that the Thakur had been guilty of planning, and his cousin Takht Singh, of taking an active part in carrying out, a brutal and cruel murder As a result of this finding the Bombay Government, with the sanction of the Government of India, issued orders that the Thakur Saheb, along with his cousin and other accomplices, should be confined during the pleasure of the Government. The Thakur Saheb and Takht Singh were therefore ordered to be detained as State prisoners under the Bombay Regulation XXV of 1827. Although the Thakur Saheb was detained under a Regulation concerning State prisoners, yet he was treated as an ordinary prisoner and confined in an ordinary jail with ordinary convicts and fetters were put on him.

Several representations were submitted by the States of Mahi Kantha Agency, as well as by the subjects of the Thakur Saheb. This led to further investigation, and the accused, who had been alleged to be the actual perpetrators of the crime, were eventually found innocent and set free, but the Thakur Saheb and his cousin, who had been accused of merely abetting the offence were detained in the Yaravda Jail till 1924, when they were released; but the Thakur Saheb was not permitted to return to Rupal The representations in his behalf of the Rulers in Mahi Kantha continued, and he was allowed to return to Rupal—but not reinstated as Thakur. Finally only so recently as April 1928, he has been suffered to assume his rightful position as Ruler of the State. It is contended :—(1) That the Paramount Power had no right to order any trial, and that the appointment of a tribunal to enquire into the charge against the Thakur Saheb of Rupal was a clear and unwarranted encroachment on the State's Sovereignty, as the Thakur Saheb was and still is, for all purposes of Municipal Law, an independent Ruler. I will not pause to read the case now, if you would be so kind as to read it. The Exhibits are the petitions from the various States and other persons, all convinced of the innocence of the man, and his innocence obviously was in the end established because he has now been restored to full power, which would have been impossible, of course, if he had been in any sense guilty. Then His Highness of Bikaner's telegram is set out here and I ask you to read the telegram—I will not trouble to read it through now. You will observe that His Highness the Maharaja has himself been

investigating the case in order to see whether it was right to put it before you for consideration or not. I shall deal with the case in my speech; I will not trouble now.

The Mandi case is one of the salt cases, in some way similar to one of the Patiala salt cases. I will not pause over that now, if you would be so kind as to consider it. I am proposing, Sir, to bind up these supplementary cases in a supplementary volume, and to have a note inserted in the main volumes, at the appropriate alphabetical place, under the appropriate heading.

Now the case of Bikaner comes under A (b) 6, the Telegraph Case. This case clearly indicates how the policy of the Government of India in the matter of telegraphs is directed to affect adversely the development of the revenues of the Indian States Before agreeing to open a new Telegraph Office within the territories of an Indian State, the Telegraph Department generally ask for a financial guarantee from the State and stipulate for an undertaking that the State would assure them an income of Rs.1,500 per annum, or indemnify them against any loss due to inadequate receipts and excess of working charges at the new office The Telegraph Department are not prepared to accept a corresponding obligation to make over to the State the balance of excess profits remaining after meeting all the expenses They are averse to leaving any spot untapped, and do not approve of a Railway Telegraph Office being worked by the State owning the Railway for the general or public traffic in telegrams as well Before the year 1904 the Jodhpur and Bikaner States, who were the owners and workers of the joint Railway, had their own Railway Telegraph Offices and used those Telegraph Offices for a considerable volume of business for their subjects, for telegraphing to Calcutta and elsewhere on commercial matters But the Government of India claimed a right to open a combined Telegraph Office at the Railway Stations of Jodhpur and Bikaner, and thus appropriate all the telegraph revenues of the two States The States withstood for some time, and requested the opening of a Government Office at Marwar Junction, which was necessitated by the Sind traffic as well The reply sent by the Director-General of Telegraphs, dated 11th March, 1904 (No 11793) is characteristic He argued that the "only object this Department had in opening an office at so unpromising and undesirable a spot as Marwar Junction was for purposes of observation and testing the wires from Bombay and from Calcutta to Karachi on this international route, and the staff of this Office with its status, accommodation and command over circuits, have been strictly limited to the requirements of the case" Not content, however, with only asking the States to contribute to any additional expenditure that the direct connection with a Government Telegraph Office at Marwar Junction with Jodhpur and Bikaner might involve, the Director-General asked for the "withdrawal of the present embargo against the opening of combined offices in the States" He added "Particularly in the case of a State like Marwar with its advanced and enlightened community having interests in every corner of India, and where remunerative expenditure on telegraphs with adequate ends and proportionate results can readily be suggested" the subject deserved to be treated as a financial whole The above remark lucidly brings out how the prospect of appropriating revenue legitimately belonging to Indian

States aroused the cupidity of the British Telegraph Department, which chose to drive the States owning the Railway Telegraph Offices into a corner and compel them to accept a combined Government Office at their capital on pain of subjecting them to intolerable inconveniences of delay and error. Well, of course, that is essentially a political position By that I mean that the State has no legal right, obviously, to compel the British Indian Department to accept the transfer of telegraphic traffic from the State, therefore it is a matter of bargain

The Bikaner State also acting on the advice of their Joint Railway Manager claimed as compensation Rs 14,000 per annum (*vide* letter No 1064/197, dated 24th August, 1904, to the Political Agent) The demand for compensation appeared to Government to be unwarranted. Negotiations went on for two years and sufferings of the public from inadequate exchange arrangements for telegrams continued. The Government of India, however, peremptorily ruled in 1906 that no compensation need be paid to either Jodhpur or Bikaner (*vide* letter No 1737/204, dated 26th July, 1906, from the Political Agent) This arbitrary fiat was conveyed in the following terms.—" It is the well-recognised practice of the Government of India to extend their telegraphic system into Native States whenever required by Imperial needs, and neither the special agreements of 1889 nor the privilege which they have enjoyed of transmitting public messages by their Railway wires entitle them to receive treatment different from that which is usual in the case of every other Durbar." How the occasion arose for asserting the claims of " Imperial needs " on the request of Calcutta or Bombay merchants for more expeditious and direct transmission of their private trade messages has not yet been divulged. Ultimately in 1907 the British Government decided (letter No. 810, dated 6th April, 1907, from the Political Agent) to purchase the one telegraph wire by which public messages had till then been sent by the State Railways, and which had not been erected at the cost of the British Government They expressed a desire to pay once for all at the rate of Rs 375 per mile of the wire, under which arrangement Rs 32,708 were once for all paid to the Bikaner State as the purchase money for the wire compulsorily acquired. The State had claimed an annual payment of Rs 14,000 by way of compensation based upon average actual receipts, and got only two years' and three months' commuted purchase money in return for the loss of a privilege that must be progressively more remunerative to the Government. That is the case, Sir There you see in effect the claim of Paramountcy to *put the Telegraph System in the State* without any particular reason such as strategic need

Then the case of Bikaner State under A (b) 9 The policy adopted by the Government of India towards Indian States in the matter of mines and control of mineral rights has been one calculated to impair their internal autonomy. The main factors governing this policy can be succinctly reproduced in the following statement which is a quotation from the Government statement (*vide* letter No 8579/R R. 34, dated 20th November, 1916, from the Resident, Western Rajputana States):—" Prospecting licenses and mining leases and transfers of the same are granted by the Durbars without reference to Government, when the parties concerned are subjects of the State. The Government

of India trust that the Durbar will, however, when mining operations in the State are likely to be extensive, either take the British Rules, including those prescribed for the reserved minerals and terms of lease, as a guide on all points of serious importance, or to adopt the British Rules and Forms" We need not trouble about that, I think. The precautions especially emphasised were· "3 (e). That there shall be no transfer of the interests conferred by a lease or sub-lease, or any part of them, to any person other than a subject of the State, without the consent of the Durbar concerned, acting on the advice of the Government of India or of the local Government, with which it is in political relations. 3 (f) That the area covered by the lease or *sub-lease shall be such as to leave unallocated a substantial portion of* the deposits within the State territory of the mineral affected This condition, which is of special importance when the mineral is of rare occurrence, may be relaxed with the consent of the Government of India in particular cases, on good cause being shown" The main objectives controlling this policy were that —(1) There should be no transfer or assignment of the mining concessions to outsiders, without the consent (or advice) of the Government of India (2) That the area covered by the concessions should be small, leaving a substantial portion of deposits unaffected—so as to be available whenever wanted by the State (3) That the tenure of the lease should not be long This general policy of the Government of India regarding mining and minerals was imposed on the Bikaner State by the Resident, Western Rajputana States; (letter No 8579/R.R. 34, dated 20th November, 1916). You see, it imposes it as a matter of order Now, Sir, it is perfectly clear as to what are the objects of those regulations, but the State raise the question, very properly, as to what the rights of the Government are to impose such regulations, and the facts of the case are that the Government (*vide* letter dated 12th September, 1901, from the A.G.G., Rajputana) compelled the State to enter into an agreement with Messrs Bird and Company of Calcutta to let that Company the State coalfields. The State wanted to reserve a colliery where it had got brown (lignite) coal, called the Palana Colliery, which was already being worked by the State, but the Government in effect made them give to Bird and Company the control of that colliery. The net result was that Bird and Company did not open out any fresh collieries at all, which was the object of the State in giving any lease whatever; they took the colliery that the State already had, they robbed it of all available coal, which had been worked evidently on the pillar and stall method, they robbed the pillars, let down the whole of the surface, and made the colliery useless and then wound up The result was that the kindly solicitude of the Government put upon the State a Company that did it a grave disservice The States complain very strongly of the control that is exercised in regard to mineral development.

The last case I have here, Sir, is the Nawanagar Port Case.

Chairman: That is still *sub judice*, is it not?

Sir Leslie Scott: Yes, and for that reason the facts are merely put before you It is before the Government of India and the facts are as stated here shortly, with the submissions as to the position. I had hoped His Highness would be here when I referred to this. I do not know whether you meant merely to record a fact by that observation of yours, Sir, or to imply anything further?

Chairman: It is not a case that we can deal with while it is *sub judice.*

Sir Leslie Scott: No. Of course, it is just because you are not dealing with any individual cases as such that the material is put before you for general purposes and for general information.

Chairman. We shall certainly read it carefully.

Sir Leslie Scott: I should not, of course, expect you to say anything about it, because it is *sub judice.* There are two points to consider, I will say nothing about them, I will just state them. They are: (1) That an agreement was made, and that on the interpretation of that agreement the State of Nawanagar contended they were entitled to do what they did, and the Government were not entitled to do what they did If there be a question of interpretation in dispute, and I make no submission about that one way or the other, that is the kind of question which is essentially justiciable. That is its value as an illustration One very interesting thing which is given here, which is not generally known, is that the expansion of exports from the Port of Bedi-Bunder which are unaffected by any import duties assessed for customs purposes, has been very remarkable, simply showing that the port as a port is a very great asset to Western India That is the point which is of great interest, and, of course, that is in no sense *sub judice,* it is a piece of information of great general importance

Then that is the end of the evidence, and I should like, if I may, before we leave, to thank the Committee for their attention to me during the protracted sittings over the evidence I have tried to take it as shortly as I possibly could, having regard to the vast mass of valuable matter that is contained in these volumes.

Minutes of the Evidence given before the Indian States Committee at Montagu House, Whitehall, S.W.1.

Thursday, 22nd November, 1928, at 3.30 p.m.

PRESENT:

Sir HARCOURT BUTLER, G C S.I., G C.I.E., *Chairman*
Colonel The Honourable SIDNEY C PEEL, D S.O.
Professor W S. HOLDSWORTH, K.C
Lieutenant-Colonel G D OGILVIE, C I E, *Secretary*

Their Highnesses the MAHARAO OF CUTCH and the MAHARAJA OF NAWANAGAR

The Right Honourable Sir LESLIE SCOTT, K.C., M.P., appeared on behalf of the Standing Committee of the Chamber of Princes.

Sir Leslie Scott: The Committee, Sir, will appreciate, I am sure, that in the time allotted to me for addressing you upon the evidence and the law affecting the complicated inquiry that you have, it is quite impossible for me to do more than refer to certain salient aspects. To cover the whole ground would require a long period of time; to

attempt to put to you the views of the Princes in the form in which I should have liked to put them is equally impossible. I have had so much ground to cover in the very limited time at my disposal that it is impossible to do more than present to you the substance without attempting any carefully considered arrangement. The preparation and presentation of the evidence under the pressure which was operating the whole time was so severe a task that it left no leisure at all for thinking about the broader aspects upon which I should have liked to have had two or three months to do justice to the subject

It follows therefore, Sir, if I may say so with all modesty, that the address that I shall make to you will in no sense be an artistic performance, but merely a series of points upon which I ask the attention of the Committee. I wanted to have those observations on record in order to prevent future misapprehension. Nobody hereafter must think that what I say in the next three half days is the whole of the Princes' case or the whole of even the more important criticisms of the present system of the Government of India, or the whole of the arguments in favour of new constitutional machinery, still less, Sir, that it is a presentation of the case with which, as Counsel, I *can feel in the least satisfied*

There is another aspect of the inquiry which I submit ought to be generally and publicly understood There is no parallelism between your Committee and the Statutory Commission. Your Committee was not appointed to cover the whole ground of Indian India as the Statutory Commission was appointed to cover the whole ground of British India The appointment of the Indian States Committee at the same time as the Statutory Commission was an accident, and your powers are limited closely by your precise terms of Reference

The Princes are grateful to His Excellency the Viceroy for taking them into his confidence by consulting them about the Reference, but they recognise that they are not responsible for the scope and terms of the Reference Both were determined by the Secretary of State, in his sole discretion, after consultation with the Viceroy

Nor have the Princes had anything to do with the essentials of procedure before the Indian States Committee. Its lines have been *determined by the Committee in their sole discretion* The members of the Standing Committee of the Chamber of Princes here in England, who had a general authority for the majority of the Princes, made a request to the Committee that the inquiry should be public They felt that the Princes had nothing to hide, and they wanted the Press to be present The British public had little knowledge of India, even of British India, but, to speak with candour, they are almost universally ignorant about Indian India, the India of the States, the India where the 72,000,000 of population are not subjects of the King, and which occupies half the area of the peninsula if we exclude Burma But it is, in the view of the Princes, vital that the British public and Parliament should know the broad outlines of the problems presented by the position of the States in India and by the treaties and engagements which the Crown has made with them. Parliament has, of course, no legislative power over the States, but it is

impossible for Parliament to solve the problems of British India without intimate knowledge of Indian India and of the rights of the States The subject is simple in its main outlines; but in practice it has become very complicated, much knowledge is needed to understand the working out of the relationship of the States to the Crown and to the Government of India and to the Provincial Governments And there is little enough time for this country and Parliament to obtain that knowledge before the Report of the Statutory Commission is upon them, with its call for legislative action. That is why the Standing Committee of the Chamber of Princes were anxious to have public hearings; they thought that it would help to inform public opinion in this country and the Empire. But the Committee did not see their way to have public hearings. The Standing Committee desire to record their regret at the decision, and refer to the correspondence which passed between His Highness of Patiala and the Chairman of the Indian States Committee in June last.

The next point I want to mention is the difficulty the Princes feel in this inquiry of knowing what are the particular aspects of the many-sided problems you are investigating upon which they ought to lay stress They have no issues to guide them. I mean that no issues of any kind have been framed. There is nothing of the ordinary character of litigation about it They do not know which of their contentions are repudiated They do know that some of them were once accepted—on one confidential occasion—when Sir Robert Holland made a famous speech*—and in Chapter X of the Montagu-Chelmsford Report But the admissions then made were accompanied by an insistence that the departures in the course of history from the strict contractual position established by treaties were justifiable by changed conditions In the Princes' submission, the very attempt at justification of those departures of itself discloses a claim of right—presumably in virtue of some vague power of paramountcy on the part of the Crown to over-ride treaties Such a claim the Princes repudiate as wholly untenable

You, Sirs, have been good enough to intimate to me, as Counsel, three topics with which you would like me to deal with more care in my address I will do so, I propose to deal with those on Monday, Sir. But beyond those three topics we have no knowledge of what is in your minds And of those three, the first two are issues raised by the legal opinion which the Princes themselves obtained and put before the Indian States Committee. We do not complain; we merely register the fact and draw attention to the difficulty in which we find ourselves and in which I, as Counsel, particularly find myself. Again, the Committee have not seen their way to acceding to the Princes' request that the Princes should be supplied by the Committee with copies of the information, evidence, opinions and arguments put before the Committee on behalf of the Government of India You will remember, Sir, that I made that suggestion to the Committee

* It is understood that the reference is to certain observations made by Sir Robert Holland in opening the proceedings, on the 22nd September, 1919, of the first Committee appointed by the Conference of Ruling Princes and Chiefs, to examine the question of codification of existing political practice.

in India and you said it was not possible to accede to it. The Government of India most courteously supplied me, as Counsel for the Princes, with copies of many official documents for which I asked in India specifically, and of certain valuable material furnished by the Government of India to you, Sirs But the procedure of the Committee has not been to put all the material they have received on the table and invite the Princes for whom I appear to consider and criticise and discuss it. So far then as the proceedings before you are concerned, the Princes are, therefore, left in the dark as to what the contentions of the Government are The view both of Government and of the Committee may be that the Princes are here as complainants attacking the existing system, and that theirs is the labouring oar and on them is the burden of proof The Princes do not respectfully share that view. They stand upon what they believe to be the firm foundation of their legal rights as defined in Counsel's opinion of July last, and submit that if the rights there recognised as flowing from the Treaties and Agreements which they have made are in greater or less measure challenged by the Government of India, it is for the challengers to make good their challenge And they add that the proclamation of Queen Victoria in 1858, and the solemn reiteration of her pledge by Kings and Viceroys since then preclude the notion of any other view of the position Their sovereignty is there acknowledged and their relationship with the Crown is based on the solid foundation of contract and nothing else—save their loyalty and affection for the King and their patriotic devotion to the Empire

But whether the burden of the inquiry did lie on them or not, they have undertaken it and put their law and their history and their evidence before the Committee without raising any question of their right to know what, for brevity, I may call the Government case about their legal position.

But none the less, Sirs, the fact remains that they have been left, so far as the proceedings before you are concerned, in complete ignorance of what that case is They have had in consequence to formulate for themselves what they understand to be the theory of rights and obligations entertained by the Government of India as its guide for conducting its daily relations with the States The Princes have gathered it as best they can from the storehouse of their own experience and from the archives of their predecessors, and from official sources and books which have received official approval It is common knowledge that the principles and rules which govern the *practice of Government and its Officers in the Political Department* are collected in a secret book by Sir Lewis Tupper called "Political Practice" which is given as a manual of official instruction to senior Political Officers, and that that book contains a résumé of all the Resolutions of Government and decisions of the Secretary of State on the innumerable points of contact between the Viceroy and the Government of India and the Indian States. That book would have been of the greatest help to the Princes and particularly to their Counsel in advising on the legal claims of the Government, in preparing the evidence, and in thinking out the problems, present and future, which are presented both by the relationship of the States to the Crown and by the economic and other relations between the States

and British India It is known to have been supplied by the Government to the Indian States Committee. The India Office was asked on behalf of the Princes that their Counsel also should have it. But the request was refused on the ground that the book was confidential. It is also known that Sir Robert Holland has written a book, which has been in type for something like a year, dealing with the problems raised by the relationship of the States to the Crown and the Government of India. A work on the subject by so eminent an official personage with such unrivalled experience the Princes felt that their Counsel should have an opportunity of considering as information and material for thought, but the India Office was not prepared to accede to this request. Recently the India Office was asked for a copy of the Feudatory States Manual, the book of official instructions to Political Officers as to the way in which they are to conduct the relations of the States of Bihar and Orissa—which is so frequently referred to in the evidence of those States in the printed Volumes, as justifying grave complaints against the Government on many hands. The Princes have a typewritten copy, but do not know the pagination of the printed volume and asked for the loan of the printed volume in order that their Counsel, in commenting on the book, might give the Indian States Committee the correct references Even for this purpose the rule of "confidential" treatment of official documents affecting the Princes led the Secretary of State to refuse to sanction its production Why were these books refused? The intense loyalty of the Princes to the Throne and the Empire is known and generously admitted. How can the rules by which Political Officers are to be guided in their relations with the States be so secret that the Princes must never be allowed to know what they are? Is there any other conclusion possible from that refusal, from the enforcement of that policy, than that the whole subject of the rights and obligations of the States and the Crown and the Government of India is kept hidden in confidential mystery because there is a danger that the principles, rules and methods by which Government seek to control them, and even indeed the real opinions of Government on the true legal position, will not stand the light of day and the fresh breezes of free criticism? In my respectful submission this secrecy is all wrong, and is based on a policy wholly strange to that which led to your appointment and the formulation of your first head of Reference.

I have read with care the larger work by Sir Lewis Tupper entitled "The Protected Princes of India" which was published by Longmans in 1893, and presumably it contains the same doctrines as those which, in his other book, he lays down to guide the political practice of Political Officers And its doctrines are certainly to all intents and purposes, identical with those enunciated in that extremely well-known work "The Native States of India" by Sir William Lee-Warner, the distinguished Political Secretary of the Bombay Government, who spent his life in the Political Department and knew its doctrines as intimately perhaps as any single one of its most distinguished members in the last half century. His book was published just after Sir Lewis Tupper's and has been ever since the Bible of the Political Department. His views, as I say, are broadly identical with Tupper's. Being denied Tupper's "Political Practice"—the

Political Department's every-day manual—the Princes have been compelled to turn to Lee-Warner's and Tupper's published books for the enunciation of the rules and principles upon which is based the political practice of Government, checking those authorities by reference to the many particular decisions and rulings of Government and its Officers to be found in the printed volumes of evidence put in before you. As Counsel, I have analysed Lee-Warner with some closeness and compared it with the evidence in the printed volumes; and as far as I can judge there is no material difference between Lee-Warner's statement of the legal contentions, reasoning and practice of Government, and the actual records of them to be found in the Resolutions, Notifications and letters in our printed volumes of evidence. Whether the India Office are now revising their creed and are now ready to modify the opinion that every word of Lee-Warner is necessarily inspired I know not; but up to now Lee-Warner seems to have been followed by Government in its actual treatment of the States with the perfect fidelity of a true believer

I shall, therefore, for the sake of brevity, treat Lee-Warner as representing both the practice and the theory of Government—with the more confidence that the whole of the evidence before you, in my submission, bears out that conclusion.

I will now make an observation upon the differences between the different States. The Standing Committee of the Chamber of Princes represent *large and small States, full-powered States and lesser-powered States.* It is their duty to serve the interest of their constituent States impartially and equally, and they have endeavoured to do so before the Indian States Committee.

In Bombay His Highness of Patiala, as the Chancellor of the Chamber, gave a clear and solemn undertaking to all the smaller States He hopes that they will recognise the loyalty with which his promise has been carried out in the proceedings before you.

The position which the Princes take up is that the rights of each State, be they complete internal sovereignty, be they only minor sovereign powers, must be recognised and established Each State should be protected in its existing rights, in those rights which it truly possesses, be they great or be they small, whether they are recognised by Government in its political practice of to-day or whether they are ignored or even denied by Government To establish that position is the aim set before themselves by the Standing Committee within the confines of this enquiry, as it has been and will continue to be their aim outside it In that sense it is plain that all States, whatever their size, whatever their status, whatever their powers, have an equal interest in common action to support each other. And for that reason and in that sense I submit that the Indian States Committee can properly take an equal interest in, and pay an equal attention to, all the States whose cases are contained in the books of evidence Indeed there is a stronger reason than that for the Committee taking such a course The fundamental question in the enquiry is the true understanding of the legal position—using the word "legal" in the sense explained in the Opinion of July last. If that be ascertained and established authoritatively, the most important step of all will have been achieved And for the

purpose of throwing light on legal principles the case of a small State may be as illuminating as that of the largest. And indeed judged by that criterion some of the most interesting pieces of evidence in the printed volumes are, I submit, those from small States

In what I have just said I do not touch upon any of the difficult questions which concern the relations *inter se* of the different States And I say to those who take one view or the other on such questions, as drawing a dividing line between full-powered States and others, or right of entry into the Chamber of Princes, that none of those questions come into this enquiry and nothing I say has any bearing upon them one way or the other. All the States can combine to get their rights without prejudice to such questions upon which opinion may be divided

The Committee were good enough to put to me certain questions and I will deal with those carefully, but to-day I propose to draw the Committee's attention to some summaries of the evidence in the printed volumes which have been prepared by or on behalf of the Princes here in London The facts stated in those summaries are in my submission extracted from the evidence with complete accuracy. But there is a further point. I have endeavoured to keep their own formulation of the impressions on their own minds made by that evidence It is important for you to know not only what the evidence is as to the actions of the Government of which the States complain, but also how it strikes the Princes. The subjective aspect has its importance as well as the objective You will therefore bear in mind if you please, Sirs, that in the summaries I am now going to give you, the language used is in the main the language of the Standing Committee and their advisers who have come here from India with them.

I propose now to take these summaries of the evidence I think it would be convenient if you would allow me to take the topics in the economic part of the evidence, which is mainly Volume 4, first, and then to go to the others There is one general characteristic of the injuries in the economic sphere of which the States to-day complain.

These injuries result from policies adopted by the Government of India which, in their inception, may have been merely for the protection of their own revenue, and as such justifiable, since they were intended then only to affect British Indian subjects (vide Vol. IV, page 1743 letter No 390, dated 25th August, 1879, from the Political Agent, Cutch, to the Dewan of Cutch) The Government of India, at the inception of these policies, recognised that States' subjects could not be brought under their operation (vide Limbdi States' agreement regarding Salt, dated 5th July, 1883).

By degrees a change occurred. Departmental zeal, stimulated by the financial exigencies of the Government of India, led to the modification of these policies in directions which overrode the rights of the States, and ignored any claim of non-British India to participate in the advantages arising from changed economic conditions.

The first of the economic heads, you will remember, was "Salt"

A (b) 1. SALT.

1. A review of the history of the Government of India salt monopoly shows that when, about the year 1878, it was decided to dispense with the Customs line, the Government of India's policy was directed towards acquiring all sources of salt supply not lying within its own territory. It also aimed at shutting out from its own territory all salt that was not produced from sources which it controlled. But whatever the motives or policy, the aim was monopoly.

2. In pursuit of this policy, the Government either forbade altogether, or limited, the production of salt in the States, and also persuaded the States to give up their transit duties on salt.

3. As a recompense for these acts of abstention on the part of the States, the Government of India offered a money consideration, calculated upon the basis of the amount of salt then consumed by the subjects of the States; for instance, Gwalior, Kotah, etc

4. The leasing of important salt-producing areas such as the Sambhar Lake in Jaipur and Jodhpur by the Government of India enabled it to establish a virtual monopoly of the main sources of salt supplied in Northern and Central India

5. The Government of India thus found itself in a position to regulate the price of salt by the manipulation of the Salt duty and so to secure to itself considerable revenue

6 These revenues, none the less, depended upon two conditions.—

(*a*) Absence of any competition from the Maritime States, which were fitted to produce salt upon a large scale.

(*b*) Refusal to increase the monetary compensation allotted under agreement to salt-producing States, whatever increases might take place in the consumption of salt, or the monopoly price paid for it by the State subjects

7 The agreements, to which the Government of India insisted upon holding the States so strictly, operated inequitably owing to the circumstances attending their execution by the signatory States, as well as to the terms contained in them

(*a*) The Government of India disregarded all protests made either by Rulers of States themselves or by Minority Administrations, and forced acceptance of agreements on its own terms under threat of official displeasure, or by means of other pressure, as for instance, in the case of Cutch and the Kathiawar States It is doubtful whether any single Salt agreement was made voluntarily

(*b*) Agreements were frequently forced upon States during Minorities

(*c*) The Government of India was not content to realise its own Import Duty on Salt produced by the States, but forced the States themselves to prohibit export altogether

(*d*) Where the production resulted from the process of nature, the States were called upon to destroy the Salt so produced

(*e*) In certain States where no agreements existed, the Government of India Salt Department, without allotting any compensation, and without any lawful justification, insisted on controlling the local industry, for instance, in Patiala

(*f*) In other cases, the officers of the Salt Department compelled States to hand over their salt works and salt resources on terms which these officers dictated: for instance, Radhanpur, page 1858, Exhibits 7 and 8 (letters No.—, dated 4th November, 1839, and No. 14, dated 24th January, 1873, respectively, from the Political Superintendent), and Porbandar, page 1848 (demands of Mr. Carey, Collector of Salt Revenues, Bombay, at Rajkot in 1879)

(*g*) In order to secure the largest salt revenue, the Government of India has not hesitated to interfere with the use by the States of natural resources other than salt supply. For example, Kishengarh State was forbidden the water of its own river for irrigation purposes for fear that the supply of water flowing into the Government of India's leased salt lake might be diminished Its agriculture was thus deliberately sacrificed to maintain the Government's salt revenue.

8 In the result, subjects of a large majority of States have to look to British duty-paid salt as their exclusive or at least the main source of supply, with the following consequences:—

(*a*) Very few States get any compensation for being unable to raise any revenue from salt

(*b*) Such States as do receive compensation are to-day very inadequately recompensed, since the consumption of salt in their territories has increased five and six-fold since the date of the original agreement

(*c*) The States which made agreements are prevented by their terms from asking for revision, an option which Government has carefully reserved to itself by the one-sided terms of the document

9 The restrictions noted above have caused the actual disappearance of once-flourishing salt industries in some of the States. And the injuries inflicted have not been confined to a diminution of State revenues, but have also reacted adversely and directly upon the livelihood of considerable sections of the population. Some communities have found themselves for ever deprived of their accustomed calling. Others, connected with subsidiary industries, have been affected almost as seriously. In consequence large numbers of State subjects have been forced to leave their homes and State in search of a livelihood elsewhere

Taking that one as an example, in my submission those statements of fact contained in that summary are to be found supported in the volumes of printed evidence Here and there, in the course of these summaries, you may come across some proposition for which you cannot find authority in the printed volumes. Will you remember, if that is so, that the statements here are put forward on the responsibility of the Ministers and others advising the States, speaking from personal knowledge of these matters? Any single statement of fact which is here and is not in the printed evidence can, therefore, be checked and verified. I do not think there are many, but I say that as a precaution, in case you may find some I do it to guard myself, as Counsel, from the unjust suspicion that I may be inventing evidence.

A (b) 2 OPIUM.

The next heading is "Opium" The policy in regard to Opium pursued by the Government of India presents certain features in common with its policy concerning salt. These features are :—

(a) The attempt of the Government of India to acquire a monopoly, both for the internal and also for the extremely valuable external markets.

(b) The determination of the Government to create their *monopoly led to their exacting one-sided agreements under pressure* from opium-producing States, agreements in which the States received practically no consideration in return for their sacrifices (vide Agreement with Bansda, dated 18th June, 1897, Exhibit V b, page 1862) When the Government failed to secure such agreements, they resorted to other means to crush all competition from the trade, internal and external, of such States as resisted the pressure (Gwalior, Jaipur, Kishengarh, Bhopal See Vol VI, Part 1, para 95 of Report of Royal Commission on Opium, 1894, and page 691, Vol VI of Evidence)

(c) The refusal to recognise the right of the States to receive the whole duty upon these quantities of the monopolised commodity consumed by the subjects of the States (Cutch, Vol IV, page 1886)

(d) Interference, unwarranted by the Treaty position, in the internal affairs of the States, which accompanied the policy of exacting the maximum revenue from the monopolised commodity (See Vol 1, page 95 of Royal Opium Commission, and Nawanagar case, page 1949)

There are, however, certain features of the Government of India's opium policy which are distinctive from its salt policy and deserve separate mention.

1 To begin with, a transit duty (called a pass fee) was charged upon opium exported from the States via British territory, fixed at a rate designed not to drive the opium to adopt the more circuitous route to the sea through States' territory It was about Rs 125 to Rs 175 per chest

2 When the latter route became no longer practicable, the pass fee was abandoned, and a much higher scale of transit duty was levied on export from the States (ranging as time went on from Rs 600 to Rs 1,200 per chest) (See Kotah case, page 1923)

3 The result was to place opium grown in the States at a great disadvantage, so far as the export trade was concerned, as compared with the monopoly opium produced for export by the Government of India, which paid no pass fee, and thus to penalise both the cultivators and the traders in the States producing opium

4 In 1907-08 His Majesty's Government entered into the China Convention. It is about that time at any rate The States known to be large growers of opium were not previously consulted, though held by the Government of India to be bound by the International undertaking so assumed by Great Britain No regard was paid to the immense losses sustained —

(i) By the States' Governments which lost large land revenue through the restriction of the opium growing areas

(ii) By the traders who were left with stocks that could not be disposed *of;*

(iii) By the cultivators who lost the margin of their profit;

(iv) By the skilled workers, responsible for various processes, who were thrown out of employment

(See *para 14 onwards, letter No. 2555, dated 22nd September, 1908,* from the Political Secretary, Gwalior, to the Resident, Gwalior, page 1901)

The extent of the misery resulting from this policy was never appreciated by the *Government of India, which made no attempt to award* compensation and apparently felt no responsibility for the results of its actions

5. The China Convention was employed by the officers of the Government *of India as a fresh occasion for pressure upon States further* to reduce, or even entirely to abandon, the cultivation of opium, thereby fortifying the monopolist position the Government of India had been at pains to build up, largely for the sake of its own revenue.

6 *After their protests had been made and disregarded, the States* loyally co operated with the Government of India in carrying out the policy laid down by His Majesty's Government. But the Government of India, concerned to safeguard its own financial interests, paid *no regard to State interests, and inflicted a variety of gratuitous* injuries upon them by:—

(*a*) Refusing to allot them a fair share of the extensive non-China trade

(*b*) *Refusing to give them liberty to start their own morphia* factories

(*c*) Refusing to allot to the States a fair proportion of the profits derived from the system of auctioning the right of exporting to China the allotted quota in each year

(*d*) Refusing, even in the then existing circumstances, to abandon the pass-duty levied upon State-grown opium. *Per contra,* the pass-duty was even raised.

(For proof of these contentions see Kotah and Gwalior cases with Exhibits on pages 1890 et seq and 1920 et seq, respectively)

7 In 1913, when the non-China market was taking large quantities of Indian opium, the Government of India, on the pretext of giving the States some compensation for past losses, allowed a restricted amount of cultivation within States' territory, on condition that the crop was sold to itself at a certain price (see Kotah case, last paragraph, page 1925) The Government of India by this means kept in its own hands the profits of supplying this expanding market, further strengthened its own monopoly, and excluded the State opium trade from all participation in this new demand At this time if the States capable of growing Malwa opium had been allowed to do so, and Malwa opium had been exported instead of Government Bengal opium, a demand for Indian opium could *have been maintained and developed* in the non-China markets, because of the superior quality of Malwa opium.

8 Unfortunately the estimate made by the Government of India *of the capacity of the non-China market proved to be exaggerated* In anticipation of a continued demand for Indian opium, which

failed to materialise, loans were taken from the Finance Department of the Government of India—on which interest had and still has to be paid—and large stocks were bought in The low morphine content of the Bengal monopoly opium produced by the Government of India led to a serious decline in the world demand for Indian opium in general. This decline was in turn aggravated by the high prices of monopoly opium, to the cost of which the interest charge on the capital locked up in the large unsaleable stocks materially contributed The amount of the loan, Sirs, was 30 lakhs.

9. As a result of pursuing this policy for the last 12 years, the Government of India now finds itself seriously overstocked It is to-day not merely contemplating reducing its own opium-growing area, but is also proposing to abolish the opium-growing areas in the States once more But in the meantime (that is to say, since 1916) the opium cultivators in the States have again become accustomed to the growing of this highly profitable crop The subsidiary workers responsible for the various processes are again flourishing To destroy at a stroke the reviving opium-growing industry will be to inflict once again the same terrible hardships as characterised the years 1907-09

10 The Government of India is now endeavouring to persuade the States to abandon all opium cultivation, to obtain their opium requirements from the Government factory at the Government inflated prices, and to reimburse themselves by raising the price to their people of excise opium (See Kotah case, page 1927) It is further denying to the opium-producing States the internal markets they have hitherto enjoyed; while continuing to deny to them what remains of the non-China market, together with the freedom to manufacture morphine In short, the Government of India desires to make its monopoly complete, in order to supply the whole of India and so much of the non-China market as will still buy Indian opium, thereby assuring it the largest revenue from the production of opium, and assuring to the Provinces of British India the largest revenue from excise (N B —For the substantial accuracy of statements contained in paragraphs 7, 8 and 9 *supra* I am asked to say that the Ministers of Gwalior, Bhopal and Patiala accept responsibility, and to express regret that evidence bearing on these statements was not included in the printed volumes) I am asked to add, Sirs, by His Highness the Maharao of Cutch, that those States which do not grow opium feel it a grievance, an injustice, that so heavy a duty should be levied on the opium which is consumed within their areas

A (*b*) 3 EXCISE

1 Whereas in the cases of salt and opium, the grievances of which the States complain are the consequence of policies pursued by the Government of India for the benefit of Central Revenues, in the matter of excise, their complaint is that even the Provincial Governments are enabled by the Central Authority to do the same.

2. The Government of India, while claiming to exercise the authority of the Crown over the States, has not exerted its authority to protect the States from encroachment by the Provincial Governments, which are its own agents, or are under its control Indeed the Government

of India has rather supported the Provincial Governments in their endeavours to increase their revenues at the expense of the States, relying for this purpose upon claims of paramountcy in right of the Crown which, the States submit, are founded upon a wholly mistaken view of the legal position.

3. Some objectionable features of the excise policy and of the acts performed in pursuance of that policy are as follows:—

(*a*) Disregard of the obligation of trusteeship during minority and other regency administrations, particularly those under direct British control

(*b*) A Provincial Government in charge of a State during a minority introduced into the State a European firm of brewers and distillers, leased to it State land, and imposed and collected licence fees and excise duties, but paid all the proceeds into the Provincial Government Treasury, giving the State no share of its own excise taxation (Baghat case, page 1991).

(*c*) This action the Punjab Government tried in part to justify on the ground that the product of the firm in question was in the main consumed in British India, thus subscribing to the well-understood principle that taxation should follow consumption, and relying upon it in order to keep the money indirectly paid by the consumers

(*d*) And yet when pressed by other States to apply the same principle to them in respect of excisable articles consumed by State subjects, e.g., Charas, the Government of India repudiated that principle and so again succeeded in keeping the money (See cases of Gwalior, page 2005, Patiala, page 2021; Kotah, page 2021; etc)

(*e*) In order not merely to safeguard but also to increase their excise revenues, certain Provincial Governments have induced States to lease to them the State excise revenues for fixed annual payments, that is to say, to farm them out. The Provincial Governments have insisted, as a condition of these bargains, often induced under pressure, that the States concerned should enact excise laws similar to those in force in British territory. Not content with this, the Provincial Governments have even insisted that the States, despite all protests, should surrender, for exercise by British officers, the States' own jurisdiction over excise offences When the States showed a disposition to withstand the pressure brought upon them, they have been threatened with Government's displeasure, and made to give way. (Case of Bhor, page 1998)

(*f*) Regardless of the geographical and economic conditions existing in the States, Provincial Governments have insisted that sale-prices should be adjusted, not in the interests of the population of the States, but in the interests of the excise revenues of adjacent British districts. In consequence, the prices of excisable articles have risen beyond the means of the subjects of the States, with ensuing loss to the States' own revenues. Their policy necessitates great vigilance on the part of the Government preventive staff, for the artificial price of excisable articles places a premium upon smuggling. But the Provincial Governments, in order to save themselves the cost of the large and efficient preventive staff which

their policy really requires, insist upon the States observing a "shopless zone"—as you remember—alongside of the British border, with the natural consequence that in cases where the configuration of State territory is not such as to permit a three-mile zone on either side, that portion of State territory is entirely shopless and the inhabitants purchase their requirements from the adjacent British districts on either side—a further loss to State revenues.

(*g*) Finally there is no uniformity of excise policy among the Provincial Governments, which subscribe to, or reject, generally accepted principles of excise administration at their own discretion For example the Bombay Government refunds to the States 13/14ths of the excise duty upon bhang and charas consumed by State subjects. The Punjab Government refuses to make any concession whatever The Government of India refuses to interfere, and thus fails in its duty towards the States

A (*b*) 4 CUSTOMS

1 One of the great economic injuries which the fiscal system of British India inflicts upon the States is the collection of customs duties upon goods consumed by their Administrations or their subjects I say "Administrations or their subjects" because, of course, many dutiable goods are actually bought by the State Administrations

2. The Government of India admit they are not entitled to tax the people of the States who are not their subjects, but by their Sea Customs Act and the tariff imposed at British Indian Ports they do tax the 72 millions of people in the States in exactly the same way as they tax the people of British India This is a great economic hardship on the States who get no share of the revenue so raised, and on their subjects who consume the goods so taxed

3 Worse still, British Indian tariffs are framed purely in the interest of the fiscal policy of the Government of India, and this policy is conceived, framed and executed without any regard to the commerce, industry and agriculture of the States, upon which it has inflicted grave injury.

4 For the protection of its own customs revenue, the Government of India issues and applies to States, under the authority of its own Sea-Customs Act, notifications by which it forbids the entry into British India of ordinary commercial commodities, a course of action which the States submit is contrary to their rights (Case of Cutch, page 2039)

5 While rigidly insisting upon the payment of its own customs duties, and demanding the fullest co operation from the States to secure that end, the Government of India does not reciprocate by assisting the States to realise their own dues, in spheres where Government co-operation is necessary for such realisation (Case of Kashmir, page 2042)

6 While exacting in the fullest degree the dues which it itself imposes upon the people of India, the Government of India, and even its Provisional Governments, frequently interfere with the levy of legitimate dues by the States Such interference in the case of dues

manifestly levied for definite services rendered, inflicts grave injury upon the States, as in the case of Sirmoor (page 2047), floatage fees. Moreover there is no uniformity in the policy adopted by Provincial Governments in this respect. For example, the United Provinces Government acknowledges the legitimacy of floatage dues upon timber, the Punjab Government, in the case of the same State, refuses to allow them.

7. In its dealings with Maritime States, the Government of India, in the interests of its own customs revenues, has resorted to measures which deprive those States of the advantages of their natural situation. (Case of Nawanagar and other Kathiawar States, page 2222)

8 By arbitrarily reducing the status of certain States, the Government of India has deprived them of the opportunity of raising revenue from customs duties at all (Bihar and Orissa States)

9 The operation of Government's policy of internal free-trade has been accompanied by unfair demands upon the States. For example, when in 1878 the Government of India abolished its own transit duties, it obliged the States, often by pressure, to abolish theirs also (See agreements relating to abolition of transit duties in several volumes of Aitchison) Not only so; it seized the opportunity afforded it by the agreements it exacted from the States, in order to impose limitations, for the benefit of its own revenues, upon the States in respect of definite classes of commodities (See Gwalior Salt Agreement, Aitchison, Vol IV, page 101.)

10. The Government of India's customs policy further operates in a demonstrably unfair manner because:—

(a) The imposition of customs duty upon certain kinds of consignments is in reality transit duty which the Government of India professes to have abolished and will not permit the States themselves to levy.

(b) Cases have occurred of differentiation in duty between goods consigned to British India and goods consigned to the States

(c) Whereas the Government of India exacts its own customs dues so rigidly that it will not even exempt the personal possessions of all but a very limited class of Rulers of States from their operation, it insists upon, and obtains, the immunity even of its servants and of its troops from the operation of States' customs duty

A (b) 6 TELEGRAPHS, TELEPHONES AND POSTS.

1 *Telegraphs and Telephones.*

1 The dealings of the Government of India with the States in the matter of Posts, Telegraphs and Telephones are in general characterised by the imposition of hampering restrictions upon the internal administration of the States

2. This has become manifest in the practice of forcing upon the States policies unintelligible to them, which have been found by subsequent experience unnecessary and have been modified in a more reasonable direction Meanwhile the States have been discouraged; their initiative has been crippled; and adverse effects produced upon their commercial and administrative development Until recently the

Government of India retained in its own hands the complete control of every telegraph line and even objected to the installation of a telephone system in a State without its sanction

3 Whatever may be the advantages to India as a whole of uniform telegraph and telephone systems, it has to be noticed that British India takes for itself all the earnings

4 Ever since the time when States were permitted to construct their own telegraph and telephone lines, the Government of India have refused to connect these lines with its own system, or to apply reciprocity in interchange of traffic, as in the case of posts with States which have postal conventions

5. The Government of India has taken its telegraph lines through States, has opened and closed offices at its pleasure, as though entitled as of right to do so.

6 The existence of the Government of India telegraph system inside the States results in the intrusion of British jurisdiction

7 The monopoly of the telegraph system in the hands of the Government of India enables discrimination to be employed in favour of British Officials in regard to certain classes of traffic as against State Officials served by the same lines (e g , Reuter's messages which British Officials get at Press rates).

8 In certain States the Government of India has taken over a telegraph system installed by the State Government, without any adequate compensation (e g., Kashmir case, page 2092)

9 In the case of telegraph offices operated upon a profit-sharing basis between the Government of India and States' Governments, the Government of India does not permit the States' Governments to audit the accounts (e g , Kotah case, page 2122)

10 When States ask for the opening of a telegraph office in the interests of their administration, of their trade, or of the convenience of their subjects, the Government of India requires a guarantee of the estimated expenses But when such an office shows a profit, the Government of India keeps that profit and when the Government of India declares a loss, the States are expected to pay on their guarantee without auditing accounts, without exercising any control over the expenditure, and without any opportunity of protesting against items, e g , staff employed for purely departmental purposes, unfairly debited to them (e g., Kotah case, page 2122)

2 *Posts*

1 While the Government of India takes all profits of postal operations within the States, e g , sale of stamps, insurance and money-order charges and registration fees, profits from capital invested in savings banks, it does not shoulder the entire responsibility of safeguarding the mails, or of meeting ordinary service charges on a business basis —

(*a*) States are made to assume the responsibility for the provision of buildings free of rent, or at low rents (e g , Gondal case, page 2062)

(*b*) States are made to supply watch and ward for postal purposes (e g., Dholpur case, page 2059)

(c) States are made to supply free escorts for mails over long distances, and in the case of robbery to pay compensation (e g., Bhopal case, page 11).

(d) States are made to defray the expenses of the actual carriage of mails, e g , over ferries in the rainy season (e g Baud case, page 2057)

(e) States are made to receive in the safe custody of their treasuries postal monies (e.g , Dholpur case, page 2059)

2. In the case of States with which the Government of India has concluded postal conventions, the Government of India enters into competition with the State Postal Departments, and, for the benefit of its own revenues, inflicts losses upon the States, and despite protests, declines to close down its own offices

e.g —In the cases of Gwalior and Patiala, post offices are maintained by the Government of India in the heart of the States at the most prosperous commercial towns within the precincts of railway *stations, and letter boxes are installed* upon *the platforms* themselves British officials have been known to canvass for business in favour of the Government of India postal system, as against the postal system of the State itself.—(e.g , Patiala case, page 2137)

3 *In the case of States* which *have been persuaded to permit* the operation of the Government of India postal system within their borders in consideration of the issue of service postage stamps for official use, the Government of India manifests great reluctance to increase the issue in accordance with the admittedly expanding needs of the States (e.g., Kotah case, page 2122; Kashmir case, page 2096; &c)

4 Cases are on record where the Government of India has taken advantage of its temporary administration of a State, to introduce its own postal system, regardless of the policy of the State Government prior to such temporary administration (e g , Indore).

A. (b) 7. RAILWAYS.

Now, Sir, the next one I have got is under the heading of "Railways." It is a very interesting memorandum, the evidence for which is partly in the printed volumes and partly in official records, public records, Commissions and so on, which are familiar to Sir Harcourt Butler.

Introductory.

There are many cases in which economic necessity overrides political boundaries. A glance at the map of India is sufficient to show that a railway system could never have been produced for that country if the Government of India and every separate State had each pursued a policy of their own. The Indian States recognise the necessity for some sort of unification both in the planning and in the control of Indian Railways. They feel, however, that unification has in

certain instances been achieved at their expense and that their interests have often been brushed aside in attaining it. It is the purpose of the following to call attention to some of the ways in which this has occurred.

I.—*Indian State Railways.*

The railway system of India was originally financed with the greatest difficulty and the Government of India had at first to resort to the expensive method of guaranteeing interest at 5 per cent. on all capital invested in railways. This system proved so wasteful that the Government of India later determined to construct railways for itself, and to this end it sought the aid of the Indian States. In the year 1870 the Nizam, who had been urged to provide half the capital for a line to be constructed within his dominions, undertook to provide the whole, and in the same year Maharaja Holkar of Indore contributed a loan of Rs 1 crore.

The Hyderabad railway was to be the property of the State and the net profits were to go to the Nizam's Government The construction, working and management of the line were to be carried out by the British Government under the general supervision of the Resident at Hyderabad "acting in communication with the Nizam's Government" (Government of India Despatch, No 40, dated March, 1870). The Maharaja Holkar does not own the line (Khandwa-Indore) constructed from his loan, but receives 4½ per cent. on his capital and half the net profits of working.

The Government of India commented upon these arrangements

"It is satisfactory to us to note that in the first year after the Government had announced its intention of carrying out further extensions of railways in India by its own agency, two Native States should have subscribed such a sum, on terms as favourable as those that we have described, for the construction of lines of railway which, while they will benefit considerably their own States, may also be regarded as of primary importance to India as a whole We cannot but trust that the example set by the Maharaja of Indore and Sir Salar Jung will be followed by other enlightened rulers, and that we may for the future hope for more active co-operation of the native Chiefs and Princes of India in all works of industrial enterprise (vide Despatch from Public Works Department, 1870, to Secretary of State)

The example was quickly followed In 1872 the Gwalior Durbar advanced a loan of Rs 1¼ crores and Mysore, Baroda and Bhopal set about the construction of railways, and after 1893 many other States followed, when the Government of India adopted the policy of encouraging the construction of branch lines by separate companies. At present some 36 lines are owned or guaranteed by Durbars. The majority of these lines are worked by the great railway companies and fit into the general railway system of India Certain lines, however, are worked by the Durbar which owns them Hyderabad, Gwalior, Jodhpur, Bikaner, and several of the Kathiawar States administer lines, but these for the most part are light railways, and not an integral part of the main system.

The present position of the States' railways is shown in the following figures:—

Statement of mileage, capital and earnings of Indian State Railways up to 31st March, 1928.

	Number of lines.	Route Mileage.	Capital Outlay.	Gross Earnings	Working Expenses.	Net Earnings
			In Lakhs of Rupees.			
1 Indian State Lines worked by the States	13	3,262	1,986	279	188	91
2 Lines worked by main line ...	20	1,727	1,491	181	106	75
3 Companies' lines guaranteed by States . .	3	754	989	182	71	111
Total .		5,743	4,466	642	365	277
Total for all Indian lines ..		39,712	82,286	11,822	7,230	4,592

These figures do not show lines in which the States have no financial interest, but which cross State territory and were built upon land ceded for that purpose by a Durbar.

II.—*Railway Lands.*

One of the inducements which the Government offered the railway companies to build lines in British India was the free grant of the land required for the railways Whenever a line was to be built through State territory the Durbar was persuaded to make a similar grant of land. This grant was made equally to private companies working for profit and to the Government of India for its State-owned lines One of the terms which frequently appears in the contracts between Government and the Railway Companies which undertook to construct lines is that the Secretary of State undertakes to use his influence to obtain free grants of land from the Indian States (History of Indian Railways. Published Quinquennially by the Railway Board) Since 1918 the Government of India, as the result of strong representation by the States, has been accustomed to pay compensation for lands assigned for railway purposes—but such compensation is paid according to the British Indian Land Acquisition Act and therefore is extremely inadequate to compensate for the State Revenues thus extinguished and the various other interests that are affected

Formerly the States compensated their own land holders from State funds, and certain States also provided the Companies with building materials free of cost. In these ways the States were persuaded to co-operate with the Government of India to entice railway capital into existence.

In order to facilitate the working of the railways and to avoid administrative difficulties the Government of India also considered it necessary to ask the States to concede civil and criminal jurisdiction over the territories granted for railway purposes, so that a ribbon of British administration stretches through State territories wherever they are crossed by a railway. The railway lands in the States are thus for all practical purposes treated as British territory. This has been brought about in two ways.—

(a) In certain cases Government has applied "en bloc" to railway areas in Indian States all the laws in force in adjoining British districts

(b) In other cases it has, under the Foreign Jurisdiction Order in Council, 1902, extended the application of specific laws of British India to railway lines in Indian States, in particular the following enactments:—

(1) Indian Penal Code.
(2) Indian Evidence Act.
(3) Code of Criminal Procedure
(4) Arms Act
(5) Cattle Trespass Act.
(6) Excise Act.
(7) Income Tax Act.
(8) Indian Extradition Act
(9) Police Act.
(10) Post Office Act
(11) Telegraph Act
(12) Indian Railways Act
(13) Stamp Act.
(14) Indian Succession Act (Act X of 1865)
(15) Court Fees Act
(16) Indian Contract Act
(17) Indian Limitation Act.
(18) Code of Civil Procedure.
(19) Indian Registration Act

In the famous Yusufuddin Case in 1897 (Yusufuddin v The Queen Empress, Indian Appeals, Vol. 24, page 137), the Privy Council gave its decision that by the provision of free land and the cession of civil and criminal jurisdiction, the Indian States had not lost their political and administrative jurisdiction over the land over which the railways were taken Alarmed at this decision, the Government of India decided that it was "desirable that a cession of jurisdiction should, in future, be set forth in a single, clearly expressed and self-contained document, so that the necessity for a reference to previous and probably vague correspondence may not again arise" (Foreign Department Circular letter, No. 1119, I.B , dated 1st May, 1899) This object, it was thought, would be secured if declarations were obtained in a form decided upon in consultation with the Secretary of State, which purported to convey a cession by the State of "full and exclusive power and jurisdiction of every kind" over the railway lands and pressure was brought to bear upon many States to sign this printed form without so far as is known the Government's drawing the attention of the Durbars to the fact that the Government were intending by the document to obtain far wider powers than they possessed under the old form of

cession of civil and criminal jurisdiction for railway purposes. Whether the Government attempt was as successful in legal reality as they thought is open to question, but they acted and made the States act on the assumption that it was and that by the new form they had obtained complete sovereignty over the railway lands except in name. (See letters No 7564 to Jind and Patiala of the 13th November, 1917, from the Political Agent, Phulkian States)

The loss of sovereignty is not the only disadvantage which the States have suffered from yielding land to the railways. The Government of India and the Railway Companies have been accustomed to exploit the land for purposes other than that for which it was granted

Railway premises are made to yield revenue in various ways; they are used for Post Offices, and for various commercial undertakings. These damage the State in two distinct ways First it is unfair that profit-making enterprises should be carried on, from which the original owners of the land receive no benefit. The railway lands were ceded by the States without payment because railway lines, at a time when they were not commercially profitable, were needed either for strategic purposes, or because the indirect benefit which they were expected to do to the country as a whole outweighed the immediate loss There are no such reasons for calling upon the States to sacrifice a part of their wealth for the sake of the Post Offices or the refreshment rooms established on railway stations.

Secondly, these enterprises often compete with enterprises in the States so that both private traders and the revenues of the Durbars are made to suffer. Railway lands are turned to profitable use in the following ways —

1 Branches of the Imperial Post Office are opened in railway premises, or post boxes are hung up in the stations. In States which have no Post Office of their own, or in States, like Hyderabad, which have a Post Office, but in which the Imperial Post Office is free to open branches, the loss to the State is of the first type only and does not amount to more than the rent of the premises used by the Post Office, but States such as Gwalior, which have a Postal Convention with the Government of India, suffer also from the competition of the Imperial Post Office with the Durbar Post Office, and lose a part of their legitimate revenue.

2 Mesne profits on grass and wood are appropriated by the railway authority. This is a loss to the State of the first type

3 Plots of land are leased for commercial purposes and the rent is received by the railway authority. This again is a loss of the first type

4 Excisable articles such as liquor and tobacco are sold on railway platforms. This involves a loss to the State of the first type, since it receives no rent, and of the second type since subjects of the Durbar can buy excisable goods at the railway station instead of in the Durbar shops The evil is particularly marked when the goods at the station are subject to a duty lower than that of the State, or, as sometimes happens, are subject to no duty at all.

5 Income arising within the railway area is subject to the Government of India Income Tax and cannot be touched by such States as

have Income Taxes of their own (e g , Killick Nixon & Co., who own railway lines in Baroda Territory, resist the claim of that State to levy Income Tax on their railway revenues).

6. The India Stamp Act is applied in railway areas and by this means also revenue is extracted by the Government from persons living within the State territory.

In only a single case has the use of railway land for non-railway purposes been admitted by Government to be wrong. The Railway Companies had allowed Oil Companies to instal their oil tanks within railway limits The States contended that they were entitled to the ground rent paid by the oil companies, and also to duty on the oil which was exported from the tanks This question was disputed between the Indore Durbar and the Government of India, and after eleven years of correspondence the Government pronounced in favour of the State (vide Indore case, page 2155)

III —*Construction of Railways*

The co-operation of the States in the Government of India railway policy has involved them in loss in other ways On the one hand they have sometimes been induced to build railways which were intended to fit in to the general scheme, but which were not the most suitable in gauge, alignment or equipment to the needs of the States which financed them, or on the other hand they have been prevented from opening new lines to meet the needs of their subjects on account of the vested interests of lines owned or guaranteed by the Government of India

A particularly clear example of the first is to be found in the Purna-Hingoli line. The Nizam's Government was pressed to construct this line in 1913, when the Railway Board intended to link up the metre gauge systems of the North and South. After the line was built the metre gauge system was abandoned, the Northern section, which should have been constructed by the Government of India, was never built at all, and the Hyderabad State was left with 50 miles of line which is no longer required as part of the proposed link

An example of the check upon railway buildings can also be quoted from Hyderabad Mr. C W Lloyd in his evidence before the Acworth Committee of 1916 said: " H E H the Nizam's Government is anxious to make railway extensions both to develop its territory and for profit There is no such lack of money as exists elsewhere in India, but an obstacle to progress is encountered in the claim of the existing railways for protection of their vested interests" The Nizam's Government proposed to build a connection between its own railway system and Marmagoa, so that the overseas exports of Hyderabad could be shipped from that port The G I P Railway, which would have lost traffic by such an arrangement, proposed (presumably with the sanction of the Railway Board) a rates agreement which would make Bombay the cheaper port for Hyderabad traders, and so destroy the utility of the proposed line At the same time the G.I P. Railway is not itself able to deal with all the Hyderabad traffic. The Nizam's Railway is in a position to deliver 900 tons of traffic daily at its junction with the G.I P at Manmad, but it is frequently restricted to 200 tons

Merchants in Hyderabad are often unable to move the crops, and in good seasons cotton has actually been burnt because it was impossible to move it. (Mr. Lloyd Jones' evidence before the Acworth Committee.)

The Mysore Durbar has been prohibited from constructing at its own expense a line of 24 miles from Bangalore to Hosur, because the compensation offered to the existing line was not considered adequate. The existing route from Bangalore to Hosur is 200 miles long. (Evidence of Sir M Visveswarya before the Acworth Committee.)

The Nawanagar Durbar, in the same way, has been prohibited from building a line from Rajkot to Jasdan either on account of the vested interests of the Morvi State Line, or because of a previous decision of Government that Bhavnagar had to be taught a lesson for attempting to construct a railway without Government sanction. On another occasion the Nawanagar State was put to considerable loss by the refusal of the Government of India to sanction the building of a line, for which a loan had already been raised, until 10 years after the original plans were drawn up, and until the costs of building had been doubled by the rise in the price level (Nawanagar case, page 2178.)

Thus, while the States were reluctant originally to invest money in a form of enterprise which they did not then understand, they were constantly urged by Government to build railways, but now that they have learned their value and are anxious to do so, they are constantly impeded by the claims of vested interests

IV.—*Rates*

The States have suffered in another way from the railway policy of the Government of India and of the companies, that is by the manipulation of railway rates The question of railway rates is highly technical and only the most expert can judge whether a particular set of rates is fair or not. There is probably no trader in the world who believes that his goods are fairly dealt with by the railways which carry them. It is therefore very hard to judge whether or not the Durbars are fairly treated It is obvious however that the railway companies working Durbar lines are very strongly tempted to manipulate rates in such a way that as much traffic as possible is run over the lines from which they receive the whole profit and as little as possible over lines from which part of the profit must be handed over to another authority. Many States whose lines compete with those of the companies believe themselves to be treated in this way.

The following examples from Gwalior illustrate the point.

The Durbar owns the Bina-Baran Railway, and the Bhopal Ujjain and Nagda Ujjain lines, all of which are managed by companies.

(1) Between Itarsi and Indore there are two routes, one via Ujjain, of which part of the line belongs to the Durbar, and one via Khandwa, of which the whole belongs to the Company. The Khandwa route is shorter than the Ujjain route, and the company at present sends grain booked from any station between Nagpur and Itarsi, Jubbalpore and Itarsi or Amla and Parasia (via Nagpur) along the Khandwa route If the principle of "bed-rock rates" were applied Ujjain

would be the cheaper route and the Durbar line would enjoy a share of the traffic The Khandwa route is partly over a main line on which traffic is heavy, and in this case the longer route would probably be more economical, but the company prefers to send traffic over its own lines.

(2) Between Howrah and Ahmedabad there are two possible routes, one via Ujjain, over Gwalior lines, and one via Amaluer, over Company lines. The Ujjain route is shorter, and if the minimum rates allowed by the Railway Board were fixed upon both routes, traffic would be sent via Ujjain Actually the Company fixes minimum rates upon its own lines and maximum rates upon the Gwalior line, and thus secures the traffic for itself.

The State lines have also suffered from competition between rival companies. The system of block rates is used by one Company to hold traffic upon its own lines for the greatest possible distance, when the natural tendency would be for it to pass over the system of another Company, or two Companies such as the G I P and the B B and C I which own rival routes to Bombay, undercut each other's rates in order to obtain traffic. Although all railways are now under the control of the Railway Board the semblance of competition is still kept up, and by this means traffic which legitimately belongs to lines in which the Durbar have an interest is often diverted away from them

V.—*Treatment of Durbar Railways*

The States believe that their interests suffer not only from the natural desire of the railway companies to make profits, but also from the favour which the Government of India sometimes shows to private capital

Branch Line Companies receive the advantage of the Branch Line terms of 1895, 1913 and 1915 (see History of Indian railways up to 1922 Quinquennial Publication of Railway Board) by which branch lines receive either a guarantee of interest (sometimes as much as 5 per cent) from the main line or rebates from the earnings of the main line on interchanged traffic, which represent a share in the profits of traffic brought by the branch to the main line, or sometimes both of these concessions In only one or two cases is either concession granted to a branch line owned by a State, even when it is managed by the main line Company Mr Robertson in his Report upon Indian Railways (1903) gave the opinion that in general the branch lines contributed at least as much to the earnings of a main line as the whole of the earnings of the branch There seems no good reason why the branch lines owned by States should not receive the same benefits as those owned by private capitalists, since their service to the main lines is just as great

Although the terms granted to the States are not in general so favourable as those to private companies they are at present in danger of losing one of the advantages which they have hitherto enjoyed Most of the agreements with Durbar lines exempt the State from liability to provide capital for current repairs and renewals The Railway Board has lately introduced new rules for the allocation of expenses to capital and revenue accounts which in themselves are

more just and scientific than those in use when the agreements with the railway companies were drawn up. The companies now declare that under these rules it has become necessary either for the States to provide capital for renewals on their own lines, or for them to accept a higher operating ratio That is to say that the terms of agreement remain unchanged as long as they are unfavourable to the States, but must be altered as soon as they become unfavourable to the Companies. This is an example of the application of the principle of "heads I win and tails you lose" from which the States have so often suffered

In competition with Government Railways, the States further suffer from the fact that the Railway Department is now credited with a rebate of import duties on all railway stores and materials, while the Durbars receive no rebate. It has elsewhere been argued before the Indian States Committee that the States have a just claim to rebate of the whole of the customs duties upon foreign goods consumed by their subjects, but the case for rebate upon railway stores is even stronger than the general case, since the lack of it definitely places *State railways at a disadvantage compared with the Government* railways, and makes new schemes more expensive for them to undertake.

Certain States also find that their industrial enterprises receive less favourable treatment from the Railway Companies than private enterprises in British India.

For instance the development of the Umaria coalfields in Rewa State has been brought to a standstill by the fact that coal from the mines in the Central Provinces is granted preferential treatment in the matter of railway rates

Conclusion

Although the Indian States admit the necessity for a certain degree of centralisation for the railways of India, and although they are sensible of the assistance which they have received in opening up their territories from the Government and the Railway Companies, they still wish that greater respect should be paid to their interests

This could be brought about if the States were represented upon the *Advisory Councils of the Railway Board Under the present constitution* of these Councils the majority of interests concerned by Railway policy are able to make their voices heard while the States are compelled to remain silent

Then I come to the general category of the imposition of inequitable burdens which I take before I finish the rest of these economic heads. Of course, many of the economic heads and some of the heads in the other part are illustrative of this general charge: heads of A (a) i, Denial of Sovereign Rights, A (a) ii, Appropriation by Crown of Sovereign Rights over defined areas and defined classes of persons; A (a) vii, Minorities; A (a) xvi, Restrictions upon borrowing; A (a) xvii, Interferences in Internal Administration; and A (a) xix, Disregard of Agreements. They all bear upon that topic, and on Monday I will draw attention to certain results, which are not actually mentioned here, of the conduct by the Government which the States respectfully deprecate You will not find this particular heading very logically arranged It really was not possible to arrange it quite

logically, but will you just take the various headings as illustrations from different points of view. I apologise for the want of arrangement, but we have not had time.

B (a) 2. IMPOSITION OF INEQUITABLE BURDENS

1. The Government of India has claimed the right to draw upon the natural resources of the States without any consideration in return.

(a) It has obtained without payment material required for Imperial roads and buildings even when these works were constructed outside the States.

(b) It has laid States under contribution in respect of organisations which, without any request on the part of the States, it decided to create (e.g., Malwa Bhil Corps). In these instances it equally disregarded its Treaty obligations to individual States and the existence of local conditions which afforded sufficient reason for exemption

(c) In the case of territories over which jurisdiction has been ceded by a State, the Government of India for certain purposes (e g, railways or Residency) has exceeded the powers so granted and taken from these territories revenue of every kind to the exclusion of the State, as if it had been granted complete sovereignty, but has not discharged its burdens, e g, it has ignored the obligation of discharging the whole cost of the necessary policing, and has made the State responsible for bearing a portion of this cost.

(d) The cost of maintaining in British jails and transporting to British penal settlements, convicts sentenced by British Courts exercising ex-territorial jurisdiction in Indian States, is exacted from the States' Governments (See Gwalior case, page 2337)

2 In the matter of exacting from certain States discharge of the obligations incurred by them, the Government of India has acted in a manner not warranted by the terms of the States' undertakings:—

(a) Where a State had undertaken to maintain troops for the assistance of the Government of India, and has so maintained them, the Government of India first placed these troops under the supervision of its own officers at a later stage removed them to localities of its own choice, thus subjecting the State to double expense, viz, payment for the troops it had undertaken to maintain, and payment for additional troops which had to be engaged for its own purposes after the original troops had been removed to distant localities (Jaora case, page 2340.)

(b) Even where the troops were provided for the specific purpose of internal security, and subsequently were removed or ceased to exist, the State has not been relieved of its financial burden (Jaora case, page 2340, Jodhpur case, page 2347)

(c) Cases have occurred where a State has, under pressure, transferred to the Government of India tracts of land, of which the revenues were calculated to discharge the pecuniary obligation of the State in connection with the maintenance of troops These tracts of land were selected by the Government of India which

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always attempted to obtain rich land, hitherto imperfectly developed, of which the revenue at the time of cession was fixed at a low figure. As time elapsed these revenues naturally increased and the Government of India profited thereby, regardless of the original figure of the contribution of the State. But further, in the computation of the revenue of the ceded territory, allowance was naturally made for tracts therein which had been alienated by the State to its own feudatories By degrees these alienations fell in, but the Government of India, instead of crediting to the State the revenues of the alienations, which formed no part of the original assignment of revenue, kept them for itself. (Sangli State, page 2366)

3 For the maintenance of its own diplomatic agents, the Government of India in one or two cases obtained by Treaty a promise of the State to find the necessary money but it has also, without obtaining any such contractual undertaking, from time to time attempted to exact direct monetary contributions from the States (Rewa, Bharatpur, Jaipur, Kashmir, Gwalior, etc.). In the absence of direct contribution, it has—to put it in a neutral way—permitted a system of the States providing amenities for Political Officers free of cost: and these amenities constitute an unfair burden upon the States, sometimes serious in amount. Lord Curzon's Minute of 1905 forbidding the practice ought to be insisted on And the initiative must be taken by Government It is too invidious a task for a single State to be expected to undertake of its own motion.

A (b) 9. RESTRICTIONS ON DEVELOPMENT OF NATURAL RESOURCES.

A (b) 10 IRRIGATION.

1 The States have learned by bitter experience that wherever their development of their own natural resources threatens to interfere with the immediate revenue-earning interests of the Government of India this development is hampered in every possible way.

2. States have been compulsorily deprived of utilising the full benefit of the water of their own rivers; e.g., in the cases of Kashmir, Sirmoor, Kishengarh and Bahawalpur. Such deprivation always proceeds from the desire of the Provincial Governments to secure the highest revenue for themselves

3. The Government of India imposes restrictions upon the development of the mineral resources of the States by the enforcement of rules which are framed in its own interests. (Bihar and Orissa, and Central Provinces States.)

4. Where the Government of India had reason to believe that immediate profits might be derived by acquiring for inadequate consideration the lease of valuable resources belonging to the States, it has rarely hesitated to acquire, even at the cost of pressure, the necessary control, sometimes with an option of unqualified renewal (Simla Hill States) Cases are on record where the Government of India has not only refused, on the expiring of such a lease, to hand back the

property, but has even insisted on the renewal of the lease without conceding the higher compensation which experience has shown to be equitable.

5 Cases are on record where the Government of India has embarked upon works for the benefit of its own revenues, without considering the effect of such projects upon the rights of the States and without conceding fair terms in return, and even without any antecedent agreement at all Protective irrigation works have been carried out which have submerged large areas of State territory The State in question was given no land in exchange, was deprived of its jurisdiction over the submerged area, was awarded monetary compensation assessed at a figure arrived at by the Government of India itself, and was not even permitted to participate in the benefits of the irrigation scheme which had caused it such injury (Bhor case, page 2223) Finally, although it knew that the result of the construction would be to submerge the lands of the State, the Government of India did not even await the consent of the State before commencing operations

A (b) 12 CURRENCY AND MINTS

In its currency policy, the Government of India has, as in other directions, pursued an aim calculated to promote the economic advantage of India, but has pursued it with a ruthlessness and with an indifference to the rights of the States which has inflicted grave injury upon those whose interests it was in duty bound to protect

1 The Government of India has persistently endeavoured to secure the closing of all State Mints, and has taken advantage of its control of the State administrations, during periods when the Rulers did not enjoy their full powers, to extort acquiescence (Sawantwadi case, page 1211)

2 In cases where this policy was strenuously resisted, the Government of India was often able to secure the closing of the Mints for a temporary and limited period, but before the expiry of this period was generally able so to arrange matters that the Mints could not profitably be re-opened (Bikaner case, page 1160)

3 The Government of India, by introducing itself in various ways into the domestic administrations of the States, has from time to time found itself obliged to take cognisance of and use the local currencies for purposes of its own transactions (Cutch case, page 2259) It has generally managed to fix a ratio of exchange which has placed the local currency at a disadvantage as compared with its own coinage, and has from time to time involved the States in loss by obliging them to provide it with local coinage at a ratio which was more advantageous to itself than that which prevailed at the time In the case of Cutch if you look at the evidence you will see that that was done twice, and on account of the change in the Exchange in the meantime it was done in an opposite direction on the second occasion from what it was on the first Further, under the terms of agreements with various States, the Government of India has bound itself to accept the payment of various dues in local currency Gradually it has compelled the States to transmute these payments into its own currency, and has done so at a figure advantageous to itself and correspondingly injurious to the States

A (b) 13. BANKING.

In the course of its monetary dealings the policy of the Government of India has been characterised by a curious insensibility both to the rights and convenience of the States. It has not hesitated to break definite agreements regarding the locality at which its payments to the States were to be made; it has abolished the local treasuries formerly responsible for such payments and has put the States to the trouble and expense of arranging to receive these payments at places far off (Gwalior case, page 2279.)

That is the whole of the summaries dealing with economic matters directly.

DENIAL OF SOVEREIGN RIGHTS

(See A (a) i, A (a) iia, A (a) iib and indeed all the classification heads A (a) i to xix.)

I now come, Sirs, to the commencement of Volume 1 under each topic of the denial of sovereign rights which, as I said at the outset, is a topic that might include the majority of the individual heads but it includes particularly two matters of jurisdiction.

1 The treatment accorded by the Government of India to certain States amounts in effect to

(a) A denial of rights of sovereignty originally recognised by itself,

(b) A breach of its own solemn undertakings.

For example, in the case of the Bihar and Orissa States (page 14), the Government of India entered into engagements with them in 1803, and in these engagements the rights and obligations of the respective parties were defined.

Later, however, the status of these States was arbitrarily reduced by the Government of India at the instance of the Provincial Governments with whom they were in direct relations The Provincial Governments, being primarily concerned with their own administrative convenience, or with the possibilities of revenue to be derived by exploiting the undeveloped natural resources of the States, were little affected by the terms of the original treaty relations.

Accordingly as time went on these States were "given" (a Greek gift) sanads, the terms of which seriously restricted their power and reduced their authority, relegated them to a lower status than that *which they were entitled to occupy, and generally subjected them in* imporant respects to the discretion of the local Governments. The sanads which were granted from 1894 onwards not merely violated the original agreements of 1803, but were also a direct repudiation of the promise set forth in the adoption sanads of 1860-62. As a result, the States and their resources have been subjected to control by, and thrown open to the exploitation of, Provincial Governments, contrary to the terms of the original engagements with the Paramount Power

The case of Mayurbhanj (page 65) is even more glaring than the case of the States of Bihar and Orissa, for two reasons. Firstly, it was never in any way under the Mahratta power—it never paid tribute Secondly, its Treaty of 1829 was made after the Government

had had 26 years of reflection upon the position of 1803, and three years after the Government had imposed terms of control upon Nagpur, which was almost in the position of a re-created State, like Mysore

You will remember that Appa Saheb was turned out in 1818 There was a Regency Administration from 1818 to 1826—and perhaps you will look at the Treaty of 1818 (Aitchison, Vol I, page 424) and at the terms of the preamble to the Treaty of Nagpur of 1826 (Aitchison, Vol. I, page 425) You will see that on the 6th January, 1818, the Treaty was signed after Appa Saheb had rebelled and been defeated Article 1 is: "The Rajah retains his Musnud until the pleasure of the Governor-General is known on the following conditions" Then Article 3: "The affairs of the Government, Civil and Military, shall be settled and conducted by Ministers in the confidence of the British Government according to the advice of the Resident . . ." Then there was a minority from June, 1818 to 1826, and then the Treaty of 1826 was made with the young Maharajah Raghojee, the preamble of which says this "And whereas during the subsistence of that Treaty in full force, in violation of public faith and of the laws of nations, an attack was made by Rajah Moodhajee Bhooslah on the British Resident and the troops of his ally stationed at Nagpore for the said Rajah's protection, thereby dissolving the said Treaty, annulling the relations of peace and amity between the two States, placing the State of Nagpore at the mercy of the British Government and the Maharajah's Musnud at its disposal; and whereas the British Government, still recollecting the former close alliance, consented to restore the relations of amity and friendship and to replace His Highness on the Musnud, and whereas in utter forgetfulness of this lenity, and in disregard of every principle of faith and honour, Appah Saheb entered into fresh concert with the enemies of the British Government, that Government was consequently compelled to remove him from the Musnud; and Maharajah Raghojee Bhooslah, having succeeded to the same by favour of the said Government, the said Treaty is concluded between the States." Article 10 put the State entirely under the direction of the British administration just as if it was a re-created State

The point that I wanted to make there was this In the result, the Treaty of Mayurbhanj, which is a Treaty which I need not refer to now as I read it to you before, leaves Mayurbhanj in complete control of its internal affairs That is three years after the business of Nagpur and, therefore, the Government's mind was clear on the question of what the position of each of these States was With that in mind, it gives to Mayurbhanj the Treaty of 1829 Therefore, I say that the case of Mayurbhanj is more clear than that of the other States who only had short though clear Treaties of the latter part of 1803, because, in spite of the fact that the Treaty of 1829 was made by the Government with its eyes absolutely open, in 1894 a Sanad is imposed upon Mayurbhanj exposing it to the same kind of control that had been put upon Nagpur in 1826, because we were, practically speaking, restoring the State on our own terms That strikes me as a very strong point.

Precisely the same process has also been at work in the case of the Kathiawar States and the Southern Maratha States. The original status of these States was clearly defined by responsible British Officers,

and was recognised by the Secretary of State for India, who repudiated the efforts of the Bombay Government to treat the States otherwise than as their real position demanded Nevertheless, the all-powerful influence of administrative convenience gradually asserted itself, being aided in its operation by the small size and limited resources of some of the States In the middle of last century an arbitrary system of classification was imposed upon Kathiawar and Southern Maratha, which seriously prejudiced the position and the rights of the smaller States This classification was based upon considerations of locality, and, in the case of the Southern Maratha States, ignored the differentiation between State and State as defined in the original agreements with the Paramount Power Sangli was grouped with its neighbours, which obviously had lesser powers than Sangli. At last a point was reached at which some of them, whose original sovereign rights cannot be questioned, have come to be regarded by the Government of India as unfitted to sit in, or even to elect representative members to, the Chamber of Princes. Jasdan is an illustration of the former point, some of the lesser Kathiawar States of the latter Such a process has only been possible because the Provincial Government became accustomed to disregard not only the original position of the States, but also the subsequent terms of the original Agreements with the Paramount Power. The result has been a daily disregard of the rights of the States manifested by perpetual interference, contrary to the Treaties, with their internal affairs.

In its dealings, even with the largest and most powerful States, in regard to which the Paramount Power possessed, under its Treaties of friendship and alliance, no rights of interference, the Government of India consistently ignores the limitation and attempts to treat these States as though they were Provincial Governments subordinate to its [illegible] tled as of right to demand their closes [illegible] that, when the States gives such [illegible] lly act of courtesy, the outcome of no obligation

Further, the States feel that the Government does not appreciate voluntary co-operation of the kind which they readily proffer, it attempts to regulate their efforts by its own standard; to dictate the methods which such co-operation shall follow, and to lend to the whole process the appearance of obedience by them to its own direct commands It exacts statistical returns for a multiplicity of purposes which subserve its own interests rather than the interests of the States, and it attempts to force upon the States its own methods of dealing with their own administrative problems.

In its dealings with the States in an important class of cases, the Government of India pursues a policy which can only be taken to argue a determination to exploit to its own advantage its possession of superior physical force It disregards the rights of the States when these threaten to conflict with its own convenience or its own financial interests, and it exploits the concessions which the States have granted by Treaty in a manner wholly unwarrantable. A good illustration is furnished by the way in which it turns to the disadvantage of the States, and to its own advantage, its possession of cantonments and residency areas within the States' territory. In such areas:—

(a) It ignores the conditions mutually agreed upon when the cantonments and residency areas were first located.

(*b*) It exacts privileges, such as immunity from taxation. and by this means inflicts direct financial injury upon the States' Governments. (Gwalior, Indore and Cutch)

(*c*) It raises large revenues, mainly from State subjects, for the benefit of these cantonments and residency areas

(*d*) It permits large trading centres to grow up within the limits of these localities.

(*e*) It utilises the presence of its own officials within State territory to exalt its own authority and to lower the prestige of the State.

Where a State relies upon its rights, by Treaty or otherwise, in order to resist a demand which it regards as unjustifiable, the Government of India, ignoring the fact that such a dispute is obviously justiciable and ought to be referred to an impartial Tribunal, claims the right to adjudicate itself upon the interpretation and the application or not of the Treaty provision, and so to decide the case to which it is itself a party (Gwalior, Kilchipur, Indore and Patiala)

In general the Government of India takes advantage of its position of power to impose upon the States a vexatious control in strictly internal matters, for which no warrant can be found in the Treaty relations

(*a*) Rulers are prevented from exercising unquestionable rights, such as the grant of life-Jaghirs to near relations (Rewa.)

(*b*) Rulers are prevented from effecting improvements in their Forces, unless they promise to give the Government of India the benefit of the improvement

(*c*) Its officers constantly interfere with the administration of justice in the States, and arrogate to themselves authority and original and appellate jurisdiction in the exercise of which, by applying British Indian Law, they commit a further trespass (Sangli, Simla Hill States.)

On the pretext of suppressing crime or improving the administration of law and order, the Government of India has frequently sequestrated, if that be the right word, and refused to abandon, large blocks of State territory (Tripura, Baud and Udaipur)

Contrary to the whole spirit of the Treaty undertakings, it intrudes its own jurisdiction into the States by asserting a claim to such a jurisdiction over:—

(*a*) Certain classes of persons, as for instance —

(i) European British subjects.

(ii) Its own employees and servants, whether State subjects or not, regardless whether the Treaty with the State in question confers the right or not (Nawanagar, Rewa, Bundelkhand States, Bhopal, Patiala, Jind, Jodhpur and Kashmir)

(*b*) Certain ceded areas (such as railways) regardless either of the specific limits of jurisdiction governing the cession or of the class of offence involved (Patiala and Tonk)

I will deal with them under two sub-heads —

(i) Railway lands are treated, contrary to the original terms of cession, as British territory British laws, fiscal and otherwise, are applied thereto, to the advantage of the Government of India and to the financial loss and administrative inconvenience of the States' Governments

(ii) Hill roads running through the Simla Hill States are treated as subject to the rules and regulations of the Punjab Government Public Works Department, contrary to the sanads to the Rulers, whose obligations have been arbitrarily extended and whose rights have been unjustifiably restricted

The Government of India has on occasion, after exercising delegated authority from a State Government over a defined area, extended certain laws and regulations of its own to that area in a fashion alike *ultra vires* and regardless of its position as the wielder of purely delegated authority.

A (a) xi. EXTRADITION.

I will deal with the legal aspect of this question on Monday or Tuesday.

The dealings of the Government of India and of the Provincial Governments with the States has been characterised by a complete *disregard of long-established usage. (Cutch case, page 1327.)*

For years a system of reciprocity prevailed; but this has been discarded, and the Government of India, while demanding from the States *prima facie* evidence before it will surrender accused persons, has now dispensed with the submission of such evidence in demanding extradition from State territory of persons whom it desires itself to try, affirming that the opinion of its own officers constitutes sufficient evidence to justify extradition by the States' Governments. (Gwalior case, page 1345, and Patiala case, page 1359.)

The Government of India, on occasion, demands from the States the surrender of persons who have committed non-extraditable offences in British India, but refuses to apply the same principle in the case of similar persons whose surrender is desired by the States. (Gwalior case, page 1345, and Patiala case, page 1359.)

In framing the schedule of extraditable offences attached to the Act of British India, the Government of India did not consult the States. The result is that certain classes of serious offences committed in the States cannot be punished if the offender escapes to British territory. Further, as the schedule is based upon the provisions of the Indian Penal Code, the Government of India's insistence upon the schedule as governing extradition is, in principle, a violation of the well-recognised undertaking, to be found in many Treaties, that *British jurisdiction shall not be enforced* upon the States: *i.e.*, it is an illustration of head A (a) iii—Extension of British Indian Legislation to territories of States.

The Government of India, while insisting that desertion from every branch of its own forces shall be an extraditable offence, refuses to recognise as an extraditable offence desertion from any branch of the States' forces save the Imperial Service Troops. That was so until recently

The Government of India endeavours to prevent States from coming to the kind of extradition arrangements most suitable from the standpoint of inter-Statal convenience.

A (a) xii. GENERAL ADMINISTRATIVE DIFFICULTIES ARISING FROM LACK OF RECIPROCITY.

There are four heads given here, Sirs, for which the Ministers in attendance upon the Princes in London are responsible, and I am informed that there is no question as to the accuracy of the statements of facts contained in them. You will judge, Sirs, for yourselves.

1. The Government of India refuses to recognise State officials as "public servants" within the meaning of its own Penal Code. That one, of course, is in the printed evidence (page 1395)

2. The Government of India refuses so to amend the Evidence Act as to permit depositions made before a Magistrate in an Indian State to be recognised as evidence in a British Indian Court.

3. The Government of India endeavours to compel the attendance of State officers, judicial and otherwise, before its own Courts to depose to acts performed in their official and judicial capacity

4 The Government of India endeavours to compel States to send their original records for the purpose of evidence in British Indian Courts

A (a) xiii INTERFERENCES IN INTERNAL ADMINISTRATION

1 Even in the case of States whose Treaties do not bind them to seek the advice of the Government of India in the employment of European and other non-Indian officers, the Government of India has uniformly insisted that such advice shall be sought, and reserves to itself the right to sanction or to forbid such appointments This policy has the following consequences:—

(a) It demoralises the public services of the States, by introducing, in the case of non-Indian officials, a consideration absent in the case of Indian officials—namely the approval of the Government of India to their appointment

(b) It necessarily operates to affect the feelings of the non-Indian officers themselves towards the State Government that employs them for they are conscious that they owe their position not solely to the choice of that Government but also to the approval of an external authority—the Government of India

The action of the Government of India is, it is submitted, illegal, i e, based upon no right really vested in it except where the Treaty confers it by an express article Presumably the Government acts upon the fallacious theory advanced by Sir William Lee-Warner that because a few Treaties confer the power, therefore all must be construed as if they contained a provision which they do not An analysis of the Treaties on this point yields interesting results, and makes it clear, in my submission, that Lee-Warner's theory is sheer fallacy I have made an analysis of the Treaties, and I will give it to you, but I think it will perhaps be convenient to finish these summaries first, Sirs

Diplomatic agents accredited to the Courts of the States by the Government of India have shown a disposition to take advantage of their situation in order to interpose, so far as may be, their authority between the Government of the State and its subjects They frequently succeed in controlling the personnel of the superior services of the

States, and, indeed, in exercising a general supervising authority over the entire administration. This results from various contributory causes

(*a*) The Diplomatic Agent receives applications and complaints from State subjects, requires explanations of particular actions to be submitted to him; and insists upon the execution of measures which may happen to seem good to him (See cases of Indore, Bikaner, Gwalior, Idar, Jaora, Nawanagar and Wankaner.)

(*b*) The Diplomatic Agent, in disregard of the Treaty obligations of the Crown, supports recalcitrant officials and subjects against the authority of the States' Governments; protects such recalcitrants in their refusal to discharge their duty, and insists upon the States abstaining from the exaction of any penalty (See cases of Baoni and Rewa.)

(*c*) The Diplomatic Agent, under the colour of ensuring good administration, sometimes forces his own nominee upon the State in a particular post, at the same time insisting that the officer chosen by the State Government shall be ejected. (See case of Bhopal)

(*d*) The Diplomatic Agent sometimes addresses communications to the Ruler of the State couched in terms not merely discourteous, or even offensive, but calculated to lower the authority of the Ruler in the eyes of his officers and of his subjects

(*e*) The Diplomatic Agent sometimes claims as of right, profits, privileges and immunities contrary to the laws of the State, which can only be exercised if permitted as an act of grace by the Ruler. (See cases of Bikaner and Gwalior.)

(*f*) The Diplomatic Agent often asserts a right to conveniences and amenities which are in reality merely a token of courtesy and goodwill on the part of the States (See case of Bikaner.)

(*g*) The Diplomatic Agent sometimes assists servants of the British Government working inside the State to avoid the responsibility incurred by them for contravening the regulations of the State. (See cases of Cutch and Rewa)

(*h*) The Diplomatic Agent often interferes to stay the execution of decrees of State Courts. (See case of Patiala.)

NOTE —The above use of the description "Diplomatic Agent" must not be misunderstood This was the original, and remains the chief, function of the Political Officer It is not denied that where the Political Officer is transmitting an order of the Viceroy in those rare cases such as intervention because a State's security is endangered by gross misgovernment, he is not merely and only a Diplomatic Agent. But these cases are in practice wholly exceptional.

A (a) xiv. ARMS AND AMMUNITION.

In its anxiety to secure control over the arms and ammunition which are at any time available in India, the Government of India has seriously infringed the sovereignty of the States, besides interfering in various ways with their administrative convenience.

The restrictions of the British Indian Arms Act have made the States entirely dependent upon the discretion of the Government of India even for the equipment of their regular forces of police and

military. The occasional refusal of the Government of India to allow States to purchase rifles of a sufficiently modern type, and to obtain adequate quantities of ammunition, exposes, for instance, State-armed police to a serious handicap in the discharge of their duties. (See case of Nawanagar.)

The extraordinarily rigid restrictions imposed by the Government of India upon the sale of revolvers and revolver ammunition makes it very difficult for States to obtain such weapons for the use, even in circumstances of real necessity, of senior civil officials The Government of India often questions, and occasionally refuses, authoritative requests put forward by the States themselves for the grant of licences to purchase revolvers, ignoring the fact that the States themselves are obviously the best judges of the merits of individual cases. (See case of Patiala.)

The movement of State officers who have to travel armed on duty is made very difficult by the general refusal of the Government of India to recognise the validity of State arms licences within even those portions of its own territory which are intermingled with the territory of the States. Such officers are compelled to obtain the licence issued by the Political authorities, a process derogatory to their position and to the prestige of the State. (See case of Gwalior)

The rigid application of the Arms Act Rules, even to the persons of the Rulers and of their immediate relations, compels a Prince or his Heir Apparent virtually to ask a favour of the Political authorities whenever he desires to purchase a rifle, or to obtain cartridges, for ordinary sporting requirements (See case of Bikaner)

The Government of India most arbitrarily prevents States from manufacturing arms, even when such manufacture is known to have been carried on for very long periods. (See case of Indore)

Sirs, I have finished all the individual headings except "Minority Administrations" and I want to keep that, if I may, to deal with as a legal question with some questions of law on Monday.

I will, therefore, ask your leave to examine now the Treaties in connection with the Article forbidding the employment of Frenchmen or other Europeans—in some cases Americans—because there is a general impression perfectly clearly established in the mind of Government that they are entitled to forbid any State to employ a Frenchman or an American or an Englishman without the leave of the Supreme Government In my submission that is a misconception, they have no right to impose any necessity of Government sanction on such employment It has arisen, I imagine, from the fact that in some of the early Treaties there were such clauses Would you kindly refer to page 268 of Lee-Warner's book? "From another point of view its interference"—that is the Government's interference—"is justified The larger States of India by treaty, and the rest of them by tacit understanding and usage, have agreed not to employ Europeans without the sanction of the British Government Some have agreed not to permit the subjects of Western nations to reside in them without permission" I need not trouble about the rest I will not argue it now, Sir, but that view I submit must be read in conjunction with the view expressed by him on page 38, which I will not trouble to read now, that the Treaties with the Indian States must be read as a whole; that is the point.

Now, Sir, I have made myself an analysis of the early Treaties, and indeed I have continued the analysis to a comparatively late date You will remember that I handed in on the 12th day an analysis containing treaties down to shortly before the Mutiny, to 1848 (Appendix "V") Since then I have made a rather more careful analysis of the position with very interesting results. I have got copies here which I will ask you to allow me to hand to you now. (Same handed to the Committee. See Appendix "W.")

Then you will see I have taken the early Treaties of States which did enter into this term and I have included States which have since been annexed or lapsed, because for this purpose it is immaterial. The interesting thing that emerges is that every one of the cases where the clause was inserted is plainly attributable, with the exception of two Treaties in 1812 to which I will refer, to purely military considerations, and in the main to the fear of the French. It was because these States were employing French officers to command their troops and the Company wanted to get rid of that particular danger, that wherever they got an opportunity of imposing this term it was put in If you follow that through with your minds' eye on the history of the time, I think you will agree that that is correct. In order to save you the necessity of turning out the volumes of Aitchison, I have shown in the centre column the Articles of the Treaties that seemed to me to be relevant I have made my own remarks in the remarks column which I submit to you as part of my speech

The first is Article 2 of the treaty with Oudh in 1775. You will remember that in 1765 Oudh was really recreated by the act of the Company, a year after the battle of Buxar. On the succession of a new Ruler we claim to be in a position to impose our own terms at that time

The interesting thing about that is that this has been treated as an illustration of the general theory that you must read the Treaties *en bloc*, and that if you have got a Treaty with one State you can assume that everything said in that Treaty is obligatory upon every other State. It is a perfectly fallacious theory, without a shred of justification, in my submission, and here you get a very very good illustration tested by this You find here the reason why the Clause is inserted, purely military reasons; due to exigencies of the occasion; some particular fear I defy anybody to invent any legal theory upon which you can say that that clause, introduced in particular bargains for particular reasons, can be treated as generally applicable to other States in other circumstances.

Professor Holdsworth: I do not disagree with that, but there is one point that strikes me, and that is this: In your opinion, which I have read with great care, we are told a great deal about the Paramountcy agreement, and we are told it gives similar rights, as against all the States, but it is not true to say that you get identical Treaties with all the States, and in order to get that Paramountcy agreement do you not have to tie a certain amount of reading together in the way you condemned just now?

Sir Leslie Scott: I expected that question, because it is the obvious question that arises upon the thing, and a very important question.

I will give you the detailed answer as a whole on Monday, when I am dealing with it, because I think that is the most interesting question of law that is raised by the case, or one of the most interesting. I will not attempt to deal with the argument in snippets, if you do not mind because I think I can make it clearer if I do not, but take it I appreciate that is a matter that has got to be dealt with, and I intend to do so I thought that this particular instance might be of use to the Committee, because I believe I have found every single Treaty containing the clause

There is one I did not put in, because it seemed to me to deal rather with other considerations. You do find the same clause, or a similar clause, in the treaties with Kolhapur. Kolhapur was a State of the Mahrattas who had lived on piracy through the whole of the 18th century. It was to defeat them that the first Treaty with Sawantwadi was made, the one of 1730, and there were many Treaties made in order to try and get help to hit these pirates, and I think the circumstances of Kolhapur were quite local, and quite particular, and therefore I did not bring it into the general category You will remember where it is, it is down below, to the south of Bombay. In the list (Appendix "V") there are 74 States As you will have observed, the list I have given you to-day slightly overlaps

With those States the Treaties run from the last year of the 18th century down to 1817 Out of the 74 Treaties there are only 7 of those States that had the clause forbidding the employment of Europeans without leave of the Government The seventh one was Nepal standing rather alone There remain the six namely, Mysore, Gwalior, Datia, Indore, in the years 1799 to 1805 as one group, Orcha, Nepal and Samthar Orcha is 1812, Nepal 1816 and Samthar 1817 The years 1803-4 were the years, you remember, of Lord Lake's wars, and the years 1814-17 were the years on the one hand of the Nepal War, and on the other of the Pindari menace Lord Lake, in trying conclusions with Scindia and Holkar in 1804 and 1805, had a difficult time, because the armies of these two powerful Rulers, as you remember, were commanded by French and other European generals (in the case of Scindia by De Boigne, Perron, Jean Baptiste, &c) The object of this provision in the Treaties of that period was to exclude the possibility of European foreigners in the service of these Durbars rising to influential rank in their Armies Where such European assistance had not been invoked—as for instance in the States having smaller armies, the other 67 out of the 74—a provision is not to be found

Further, it is to be remembered that at that period it was all that the British Government could do to maintain their position, and that there was no question then of the prestige of European nationals, or of any other reason for excluding Europeans from free service under Indian Rulers

To-day, in spite of the absence of any specific provision in the Treaties of the 67 States, the rule of compelling States not to employ Europeans in any capacity, without the sanction of the Government of India, that is, of their Political Officers, is universally enforced, and the Princes submit, without justification in law

Similar considerations apply to the question of civil and criminal jurisdiction over Europeans, but that I will deal with on Monday. In the list (Appendix "V") you have the references to the clauses in Treaties dealing with the question of the jurisdiction over Europeans

May I say that after the conclusion of my address to you on Tuesday afternoon—I think it is very likely it will be fairly early in the afternoon—His Highness of Patiala, the Chancellor of the Chamber, would like to add a very short statement of the views of the Standing Committee for your consideration, if that meets with your approval

Chairman: Certainly.

Minutes of the Evidence given before the Indian States Committee at Montagu House, Whitehall, S.W.1.

Monday, 26th November, 1928 at 3.30 p.m.

PRESENT:

Sir HARCOURT BUTLER, G.C.S I., G.C.I.E , *Chairman.*
Colonel The Honourable SIDNEY C. PEEL, D.S.O
Professor W. S. HOLDSWORTH, K.C.
Lieut.-Colonel G. D OGILVIE, C.I.E., *Secretary.*

Their Highnesses the MAHARAJA OF KASHMIR, the MAHARAJA OF PATIALA, the MAHARAO OF CUTCH and the MAHARAJA OF NAWANAGAR

The Right Honourable Sir LESLIE SCOTT, K.C., M P., appeared on behalf of the Standing Committee of the Chamber of Princes.

Sir Leslie Scott: On the last occasion, Sir, I ventured to ask you if His Highness the Jam Sahib might add a word or two about the question of arming police. He thought he had told you of it, but I have looked into the matter and I find he has not. Might I put that very shortly?

Chairman. Certainly.

Sir Leslie Scott: Your Highness, the Jam Sahib, I think you had a telegram to-day about some outlaws in your territory or perhaps from your territory; perhaps you might read that to the Committee as a peg on which to hang your remarks

His Highness The Jam Sahib of Nawanagar: Yes, I got the telegram this morning in respect of outlawry Recently two Makranis went into outlawry in Kathiawar, collected a gang together and have been terrorising the people of Kathiawar. After some considerable time I have got a telegram from my Political Secretary to the following effect: "Makrani outlaws fled towards Marwar, Sindh, early this month; Marwar police killed principal two of them, Maguman and Ismail, in encounter after some loss of life. Sindh police caught remaining two. This finishes outlawry Parshuram." In 1916 and 1917 some of the

semi-criminal tribes residing at Okamandal, that part of the north part of Kathiawar that belongs to His Highness the Gaekwar, went into outlawry, and we had the greatest difficulty in coping with the evil Twelve of my police attacked and fired a volley against them. Three guns or rifles went off all right. One of these killed one of the outlaws and the other two rifles missed their mark; most of the other nine who fired were themselves hit through the bursting of their weapons which were old muskets, 107 years old The result was that though we disposed of one outlaw, two of our people died, two had their limbs amputated, and other people were rendered useless, owing to head injuries, from serving any longer in the police So that the casualties were nine on our side and one on the other side. That was due to the character of our rifles

Sir Leslie Scott: In your experience is it absolutely vital that the police should have proper up-to-date weapons?

His Highness The Jam Sahib of Nawanagar: Yes, proper up-to-date weapons such as the police in British India have

Chairman Colonel Ogilvie, can you tell me what the position is?

Secretary Since the war the position has entirely changed with regard to the State police About five or six years ago orders were issued by the Government of India saying they would be willing to give arms to the States for the arming of their police at the rate of one weapon per 3,000 of the population, which is the same ratio as is adopted in British India It is only the lack of rifles in the arsenals which has prevented the Government of India from carrying out that policy. That is the present position

Sir Leslie Scott. Then I gather that the position is acknowledged on the part of the Government, it is merely a matter of consideration as to details

Secretary: Exactly.

Sir Leslie Scott Sir, I propose to deal to-day with the first of the two questions which you were good enough to address to me some little time back The first question upon which you desired me to address you was the basis of my contention that residuary jurisdiction is vested in the States and not in the Paramount Power, and that usage and political practice play little or no part in determining the relationship between the Paramount Power and the States The question contains really two quite separate questions and I think it will probably be convenient to treat them separately I therefore deal first with the question as to whether residuary jurisdiction is vested in the States or in the Paramount Power Before I deal with the specific question, I think it is desirable to say a few words about paramountcy by reason of the question which Professor Holdsworth was good enough to address to me some time ago He asked me in effect, as I understood the question · Do you say that the paramountcy agreement is to be found by consulting some treaties and treating the terms there found as of general application or do you say that it has an origin apart from treaties and exists because an agreement was *de facto* made, whether there was a treaty or whether there was not a treaty? I think that is the question which you in effect addressed to me, Sir?

Professor Holdsworth Yes, I think so.

Sir Leslie Scott In the view that I am submitting to you on behalf of the Princes, paramountcy, as defined in the Opinion of Counsel of July last, results from an Agreement between the Crown and a State by which the State cedes to the Crown certain rights in consideration of its accepting certain liabilities in connection with the foreign relations and security of the State Paramountcy may be viewed as a resultant relationship or the sum total of specific rights and obligations. Where then is the Agreement to be found? The following considerations, I submit, show that the fact of agreement is to be inferred from the known circumstances affecting the Crown and the States at the time when British power became dominant in India, and the British Government resolved upon the policy of obtaining the permanent assent of the States to its occupying that position in India

Leaving on one side for the moment the question of the particular form in which that agreement was intended to find, or had found, expression, it is obvious that the essential feature of the relationship constituting paramountcy was an undertaking from each State permanently to abandon the idea of obtaining paramountcy for itself, an undertaking to become as it were completely self-contained, to forswear expansion at the expense of other States, to give up the idea of increasing its power by means of alliances, in short, to leave to the Crown the characteristically paramount right of determining, in its discretion, the attitude of each and every Indian State towards foreign powers like France and their relations *inter se.*

It was not likely that the Indian States would easily consent to such a self-denying ordinance They would not consent until the power of Britain was established in the Peninsula permanently and beyond all question But, on the other hand, it obviously would be no small attraction to an Indian Ruler, after a century of internecine fighting between the different States, to receive an effective guarantee that his Gadi would be safe for himself and his successors, and that the security, external and internal, of his State would be permanently assured

In the nature of things, with our knowledge of Indian history, we should not expect the Paramountcy Agreement to come into existence suddenly and by one contemporaneous series of acts all over India. The dominance of Great Britain was achieved gradually, between the *time of the Seven Years' War and 1817 During the last few years of* the Eighteenth Century and the first few years of the Nineteenth Century, the policy of controlling the foreign relations of each State and of guaranteeing its security, coupled with the application of the subsidiary system, i e, the plan of keeping in or near the State a subsidiary force permanently paid for by the State to prevent anti-British actions by it, was taking shape You remember what Wellesley did particularly And when the Mahratta power was finally crushed in 1817 by the subjugation of the Peshwa himself, and the control obtained over his generals in command of the leading Mahratta States —Gwalior, Indore, Baroda and Nagpur, the dreams of Paramountcy of the Peshwa were dissipated, Paramountcy in fact was attained by Great Britain, and the time was ripe to initiate the policy of obtaining general acceptance of British Paramountcy.

By the Treaty of Gwalior of 1805, the British Government had agreed not to enter into alliances with the powers of Rajputana, but this restrictive covenant was cancelled by the Treaty of Gwalior of 1817, and a great network of treaties was spread over Rajputana and Central India by Lord Hastings, in which the main features of the Paramountcy Agreement were embodied. I think I may take it that you have in mind the main features of the Rajputana agreements, like Udaipur.

Lee Warner takes 1813 as the dividing line of the period of what he called the Policy of the Ring Fence and the succeeding policy of Subordinate Isolation. The name of "subordinate isolation" is given by him to the policy of keeping every State both subordinate to the Crown and isolated from every other. As a policy I think it was begun in the time of Lord Wellesley and really continued till the present century, till the Great War, although Lee Warner prefers to substitute the description of "subordinate union" for "subordinate isolation" if you remember, after the Mutiny, but I submit that is not very accurate. It was as an ancillary aid to that policy that the plan of the Paramountcy Agreement was followed. But I doubt whether it was either initiated or followed consciously, except in the insistence upon the surrender of all foreign relations in practically every treaty that was made after 1817, during Lord Hastings' tenure of the Viceroyalty

It was natural enough in the case of those States with which the Crown already had treaties that no universal attempt should be made by the Government to get their signature to a new treaty, expressing in plain language the kind of isolation and subordination assented to, for instance, by the Rajputana States in their first treaties, viz, those made in 1818 But various circumstances combined to make acceptance of the Paramountcy relationship quite natural, the fact of the acknowledged paramountcy of Great Britain in India, the example of so many States entering into agreement on similar lines to the Rajputana Treaties the fact that the more important of the other States who had already made Treaties had accepted the system of subsidiary forces, the notoriety attaching to the Government's occasional exercise of force, where a State attempted to break away from the general scheme e g, Nagpur in 1818, or Oudh in 1837, coupled also with an annexation, or an escheat here and there, all these factors led, in my submission, to its being quite natural that there should be a genuine acceptance in a contractual sense by every single State in India of the Paramountcy relationship as defined in the Legal Opinion, and that is, in my submission, what in fact happened

It is thus not because the main Paramountcy terms are expressed in some Treaties and because, as Lee-Warner suggests the terms of those Treaties can be treated as binding upon other States, but as a necessary inference from the *de facto* relations of the States to the Crown, including their isolation from all other States and their surrender of all external sovereignty, coupled with the protection of their internal and external security which they were in fact enjoying, that the Paramountcy Agreement can properly be asserted to exist The terms of it are to be ascertained on the one hand by a consideration of what is essential to the constitution of the relationship, to the mutual acknowledgment of that minimum of rights and obligations without which Paramountcy would not be Paramountcy, and on the other

hand by the rejection of every term, however reasonable, however convenient, which is not absolutely essential and necessary. Those two correlative considerations are very fundamental to the inference of agreement in fact which underlies the relations and constitutes the relationship

Professor Holdsworth: But would it not be just as true to say that it was a matter of usage or custom; that is to say, that the facts were such that custom grew up to accept the Paramountcy of the Crown? Of course, that is not what you say in your Opinion, I know.

Sir Leslie Scott: You very nearly say what we have said in the Opinion when you say a custom, usage to accept the Paramountcy of the Crown

Professor Holdsworth: You deny, if I understand your Opinion, all operative effect of usage.

Sir Leslie Scott: We have put before you the view that usage as such has no efficacy, that behind it you must recognise the existence of an agreement, and the Paramountcy which results is due to the fact of a people agreeing to do that thing and it is only where the usage does represent the existence of an agreement to follow the usage, that it has any binding force at all That was one meaning, or one part of the meaning, of the phrase in our Opinion "Usage is of itself sterile."

I am going to deal particularly with usage in the latter part of my submissions. What I am trying to put to the Committee here is the broad conception that you find, over a period of years, a large number of States, who for this purpose might be regarded as individuals, recognising the existence of a certain relationship and all acting in conformity with that relation and recognising it as one that binds both States and the Crown, and from that conduct or that usage a custom comes, it does not matter which name you give it, you infer the existence of an underlying agreement which gives it binding force; but I know of no principle which can treat usage as such, and mere usage, as having any binding force in such matters I am going to deal with that aspect of it presently but the essential thing to remember all the time, I think, is that these States started, the majority of them, with the position of complete sovereignty, the completeness of which continued with many States that were in Treaty relationship down to the beginning of the nineteenth century. They then come into a position with the Crown of defining their relations. The moment a Treaty is made between the Crown and a State defining the mutual relations of the two, their rights and obligations are automatically defined thereby, and once they are defined they cannot be departed from by either side without the sanction of the other: and that is another reason why usage which does not represent agreement can have no binding efficacy. The principle underlying the interpretation of this point is one that is well known to lawyers. It is illustrated by two different types of agreement, the written agreement where by interpretation the Court reads into it those terms which are necessary to give business efficacy to the bargain and no others; that is the principle of the "*Moorcock*" (L.R., 14, P.D.) and the other is the case of, for instance, a conspiracy agreement where there is no evidence at all of anything having been written to constitute an agreement, or any oral agreement having

been made, and yet on a review of the whole of the circumstances of the case the jury find, as a fact, that there was an agreement to conspire together. So from the whole of the circumstances obtaining in India from the time when Great Britain became dominant, which was the end of the year 1817, in my submission you have material there from which the necessary inference when the whole of the facts are understood is the acceptance of the Paramountcy Agreement containing the terms indicated in the Opinion

Then the next question is: What then is the bearing of those Treaties which contain most of the Paramountcy Terms on the question of the Agreement? The answer, I submit, is that the notorious example in India of what so many leading States had done, like the Rajputana States, was calculated to induce other States tacitly to follow suit and to agree to being placed vis-a-vis the Crown in a similar relationship That is why the group of Treaties made in 1818 are so significant and interesting, because they show that simultaneously with the achievement of domination in fact, the Government was adopting the policy of obtaining from the States their permanent assent to the adoption of the contractual relationship which corresponded with the position in India, to which history had led both the Crown and the States There is thus no question of taking all the Treaties and finding a lowest common denominator, and saying "that is Paramountcy." From certain of the earlier Treaties parts of the Paramountcy bargain are plainly absent. Hyderabad, Oudh, Alwar, Dholpore in 1803, Rewa in 1812, are illustrations In the latter two you remember that the right to call upon the Crown to come in and protect the State from internal danger is expressly excluded None the less, the conduct of these States from 1818 onwards and, in the case of the last three, down to the acceptance by them of the Adoption Sanads of Lord Canning, is in my submission, conclusive that they have all assented to the terms of the Paramountcy bargain as expressed in Counsel's Opinion There is thus no temptation to follow the fallacious process advocated by Sir William Lee-Warner in Chapter 2 of his book, and particularly paragraphs 12 and 16 to 21 If you would not mind just looking at that for a moment, page 30, you see there he says, "The sources from which the rules or principles that govern British relations with the Native States can be drawn, are first of all the Treaties, Engagements and Sanads, entered into with them. secondly, the decisions passed from time to time by the paramount power in matters of succession, intervention, or of dispute with their rulers, and thirdly, the custom or usage, constantly adapting itself to the growth of society, which may be observed in their intercourse" If you turn now to where he develops that in paragraph 16 on page 37, he says (he has been dealing with usage, and I am not pausing on that for the moment) "From this digression as to the definition and vitality of a Native State, it is convenient to pass to the examination of British Treaties with the King's Allies Although these solemn documents are not exempt from the recognised laws and necessities of interpretation, and cannot be dissevered from the environment of circumstances, which alter from time to time, and fix the mutual relations of both parties"—that is to say, alter the terms of the Treaties—"they have acquired the most formal recognition of Parliament" Then he deals with the recognition by Parliament with which you are all familiar Then on page 38, he says "In common parlance,

the expression 'Indian Treaties' covers these three varieties of agreements or compacts"—that is the treaties, engagements and sanads.—" Even viewed by themselves, without reference to the decisions based on them, or to the accretions of the customary law, the Treaties with the Native States must be read as a whole. Too much stress cannot well be laid on this proposition. In their dealings with a multitude of States, forming one group or family, neither the Company nor the King's Officers have added to the collection without absolute necessity. Whenever a general principle called for the conclusion of a fresh agreement with a single State, whose attitude compelled the British authority to reduce its relations to writing, the occasion was taken not to revise the whole body of Treaties but to declare the principle and its reasons in a single Treaty. The circumstances of each State are, as has already been shown, very various. In its dealings with one State, the paramount power has declared its military policy, in another case, its obligations to the law of humanity, and in others its claims to co-operation or its right of interference" Then this next sentence is extraordinarily important: "In only one instance, namely, the instrument of transfer given by Lord Ripon to Mysore in 1881, has even an attempt been made to embody all obligations in a single document. In all other cases, additions have merely been engrafted upon previous compacts in the position which was most appropriate to them, and at the time when the necessity for amendment or addition actually arose" He does not say there, but that implies, that the various provisions of the instrument of transfer to Mysore can legitimately be looked at in order to ascertain what are the provisions of the law binding upon the States as a whole. He elaborates that in subsequent pages. That is the fallacy to which I am referring. On page 40, after dealing with the laws of humanity, he says: "The language in which the British Government has intimated to particular States its abhorrence of practices which it has stigmatised as criminal, is addressed to one State, it is true, but it is equally applicable to all members of the Indian family of States. So, generally, the obligations of each State cannot be fully grasped without a study of the whole corpus or mass of Treaties, engagements, and sanads. There is another reason why the position of any given State, as evidenced by the book of treaties, can only be understood by extending the view to the whole body of them. There are some States with which no treaties of any sort have been concluded" Then he refers to Pudukkottai and Savanur. But I venture to submit that the fallacy, the *non sequitur*, is obvious. The position of a State can only be ascertained from agreements it has itself made. If there is no record of its agreements, the effect and the terms of the agreements may be gathered from other evidence, as for instance, agreement to paramountcy being gathered from conduct; but you cannot take one treaty with one State and say that the terms of the treaty on any conceivable ground have any binding force upon another State, unless the other State has agreed to be bound in those terms. Then he goes on in paragraph 17 to say: "The treaties, grants and engagements of the Indian Chiefs must, therefore, be studied together as a whole. The parts of them which obviously concern only the individual State and its protector are easily identified; and if any doubt existed at the time as to the application of a general principle to a particular State, such doubts have been set at rest by the usage of

nearly a century and by the mutual relations established between the paramount power and its allies. It is equally important to study the treaties in connection with the general framework of history Lawyers hold that *conventio omnis intelligitur rebus sic stantibus*" Then he deals with Wheaton, dealing with international treaties under conditions which are quite inapplicable to the States The reason why international conditions are inapplicable to the States, is that in international conditions the different nations are independent and free. They can give up one alliance and make another They can, if they want, go to war. They can, therefore, renounce treaties. The fundamental feature of the Indian relationship is that a State cannot renounce the relationship, because it is not free. It has no control over its foreign relations at all. It enters into a relationship with the British Government for ever, and cannot alter it The paramountcy is accepted always That is why the domain of usage, which is the basis of part of the legal principles of international law, the concensus of opinion of independent States, has no scope for displaying itself in relations between the States and the Crown Once a State has entered into relations with the Crown as Paramount Power, the relationship being permanent and defined by the terms upon which it is entered into, those contractual terms, with other rights and obligations, must continue till they are altered by consent The whole basis of relationship has been since 1817, and in fact since 1858, recognised as being one in which they guaranteed the continued existence of each State, the continued possession by the State of its territory, and of its powers The whole relationship being reduced in that way to contract, there is no room for other sorts of obligation being brought to bear The apparent exception of the right to the Crown to intervene for misrule is no exception, because that is a term of the original contract, as pointed out in Counsel's Opinion of July last If a State receives from the Crown an undertaking to protect it against internal disorder, there must, *ex necessitate*, be an implied covenant by the State to do nothing to create disorder If the State does something to create disorder, as, for instance, by gross mis-government, or flagrant injustice, *ipso facto* the Crown gets its right to intervene It is the corollary of the expressed terms of the contract, and is recognised as a part of the contract There is no State to-day which denies the right of the Crown to intervene in that event That is the reason They cannot, they have agreed to it impliedly. But the fundamental thing is that the whole régime is based upon consent, upon an agreement between the States and the Crown, as to the position that the States are to occupy in the British Empire That is, really, what it comes to There is no room for alteration, except by a subsequent agreement. The pronouncements of royal personages—the Queen and Her two successors—have emphasised the recognition of the position If you go on reading on pages 42 and 43 of Lee Warner you see he continues with that fallacy I will not trouble to read it It is underlying the whole of the rest of the chapter You will find more than once, in the course of his book, a reference to the Treaty with Mysore in 1881, as a guide to the rights and obligations of all the States He is wrong, for two reasons · (1) for the reason I have already submitted, and (2) because there is no similarity between the two types of contract When Mysore was given its position in 1881, Mysore was recreated, for all intents

and purposes, and, being recreated, it was obviously possible for the Crown to give as much or as little as it chose of independent sovereignty You remember the history of Mysore. In 1779, the then Mohammedan Dynasty were defeated, and, to all intents and purposes, the British Government held themselves free to annex the State They decided not to do so, but to grant it to the old Hindu family, and did so, on the terms of a treaty,—of which I have handed in the relevant extracts—one of which was that, in certain events, the Crown could intervene in the future and take charge of the State. In the thirties that event happened, and the Crown did intervene, and treated Mysore as part of British India for 50 years Then, on grounds of policy, it was thought desirable to recreate the State, and this was done in 1881, on terms which reserved a very elaborate and wide measure of control over the whole State To that the State could not but agree, because you cannot look a gift horse in the mouth. The State was a present. They took it on whatever terms the grantor chose They had no option But that is a totally different position from the position of the great majority of the 108 States in the Chamber. They start from the other point of view, as being wholly independent States. I leave out questions of some of them being tributaries to Peshwa, and so on, because it does not affect this question They are wholly independent, and they retain whatever sovereignty they do not give up, and they *come in on the terms of a bargain I can conceive no legal principle* whatever for urging that that bargain so made, permanent of necessity, can be changed, except by consent

With that preliminary submission to you about the character of the Paramountcy Agreement and the position of all the States *vis-a-vis* the Crown based upon the original bargain, in some cases modified, and in some cases only slightly modified, and in some cases perhaps not at all modified, by subsequent agreements, I come now to the question of where the residuary jurisdiction lies—whether it is vested in the States or in the Paramount Power? If I may put quite a short answer to that question first of all, the more important Indian States having been originally fully sovereign, you have the fact to-day by reason of the Paramountcy Agreement and in some cases of other agreements also, they are only partially sovereign. One of two things must have happened, *either those States transferred or had taken from them part* of their powers, retaining the rest, including residuary jurisdiction, or, on the other hand, they handed over or had taken from them all their powers except certain powers which were specifically allowed to remain with them. In that case residuary jurisdiction would be transferred to the British Government. Which of those two things happened is a question of fact, history, circumstances at the time, the terms of the Treaties, and so on In my submission the facts show perfectly clearly that it was the first thing that happened and not the second, that the States transferred certain powers to the Crown, retaining everything else, residuary jurisdiction remaining with the States. I notice that even Sir William Lee-Warner says on page 358, in dealing with jurisdiction "The pledges given to the chiefs have been kept by entrusting to the Governor-General in Council, as an act of state, the jurisdiction with which the chiefs have for that purpose parted" "Parted" *there means "ceded" "The jurisdiction* which the Governor-General in Council exercises through his delegates the Political Agents is the

Native State's or foreign jurisdiction; a portion of the full attributes of sovereignty or jurisdiction which, as was shown in the second chapter, are distributed in various degrees With the chief's consent, express or implied, the Governor-General in Council shares with him the attribute of sovereignty known as jurisdiction." Now, Sir, if that be a correct statement of what happened, that the Chiefs parted with certain jurisdiction to the Governor-General in Council by their consent, express or implied, then it follows necessarily that they kept all that they did not give up. The way that I think the Princes themselves think of it is this, I would like to give you that before I give you my legal view They say:—The British power is paramount in India today, but we know from history that its paramountcy was acquired by successive stages. So far as the States are concerned, the British power did not become paramount over them by conquest, on the contrary, it has treaties and engagements with them which still bind both parties Nor did the British power walk into India and dictate these treaties and engagements with the numerous States all on one date

It follows, therefore, and I now come to my legal submissions, that until these treaties and engagements were entered into, every one of the existing States was independent of the British power, whatever their relations were each to each As such independent States they possessed sovereign authority vis-a-vis the British power Nor is there any evidence to show that the jurisdiction still possessed by the States was conferred upon them or delegated to them, as part of its own sovereign jurisdiction, by the British power. On the contrary, the majority of the States had full external and internal sovereignty until the date of their subsisting agreements with the British power and many of them until long after their first contact with that power

In course of time the British power in return for the obligation to protect the States acquired from them by treaty, etc, their external sovereignty—*pro tanto* a part of their inherent sovereign jurisdiction. It thus acquired only the jurisdiction which they ceded, all the rest remains with them, which is "residuary jurisdiction" If the Crown had transferred to the States any of its own jurisdiction, this residuary jurisdiction would remain with the Crown, but the case is the opposite.

If I may analyse your question a little further, there is a certain ambiguity in it, if I may respectfully say so Both words "residuary" and "jurisdiction" are ambiguous The latter is habitually used in two separate and different senses of general sovereignty and judicial jurisdiction, civil and criminal The wider sense includes the latter which is, of course, a particular sovereign power There is a further ambiguity in the word when used in its narrower sense it may be limited to judicial jurisdiction, pure and simple, i e, the right to try cases, civil and criminal, or it may include to a limited extent both legislative and executive powers of sovereignty, viz, the right to apply rules both of substantive law and procedure to the cases heard by the Court which, in effect, means legislation and secondly, the right to exercise police powers ancillary to the effective functioning of the Court's criminal jurisdiction, which obviously means the right to exercise some of the executive functions of sovereignty territorially, i e, the conduct of prosecutions, the arrest of offenders, and the bringing of witnesses before the Court

The word "residuary" is capable of being applied, though with differing degrees of accuracy, to all the above meanings of the word

"jurisdiction." But in each of such applications of the epithet there is still the latent ambiguity. The conception of "residue" necessarily imports the idea of the whole, out of which something has been carved, or removed, and if the original be the subject of a partition between two persons, A and B, A being the original owner, the word "residue" may be applied either to what A. keeps, or to what A. grants, or indeed the whole may be granted to B., and a residue may be regranted to A, but whichever of these three senses be in the mind of the person using the word "*residuary*" in the normal use of language, the portion of the whole called "residuary" may be expected to be the undefined or unspecified part

The word "residuary" has been used in an abnormal sense in connection with civil and criminal jurisdiction in Indian history, particularly in Government language in relation to Kathiawar, and also by Sir William Lee-Warner, but before dealing with this aspect of the Committee's question, it will be convenient to discuss the simpler question of residuary sovereignty.

In order to get any clear idea at all of what is meant by residuary sovereignty and where it rests, it is vital to consider the position the moment before division took place. There are three positions possible at that moment:—

(i) State "A" and the Crown may have existed till then as wholly independent sovereign powers, each possessed of full sovereignty.

(ii) State "A" may have been previously non-existent and then brought into existence by the gift of the Crown creating it, but not conferring on it independent, i e, complete, sovereignty, but only dependent sovereignty, the sum total of sovereignty powers being divided in specified proportions

(iii) *State "A" may have been entitled to only partial sovereignty* because its sovereignty was already shared by some suzerain State other than the Crown

In case (i) if State "A" accepts the paramountcy of the Crown, or makes any agreement conferring powers on the Crown, it *ipso facto* agrees to a division of sovereign powers. What the division is, what powers are transferred to the Crown, and what remains with State "A" is a question of fact, the answer to which depends upon the interpretation of the document or an investigation of the evidence, as the case may be But in whatever ratio division be made, whatever the list of powers transferred may be, the powers which are transferred are so transferred by the act of will of State "A" making a cession, whether the agreement be spontaneous for a consideration which seemed to State "A" sufficient, or made under pressure, as after defeat in War. In such a case (if the word "jurisdiction" be *ex hypothesi* used in the sense of sovereignty) the natural use of language would apply the words "residuary jurisdiction" to the residue of sovereign powers retained by the State and not transferred. Certain powers are carved out of the totality of sovereignty possessed by State "A". This, in my submission, is the only proper use of the word "residuary". It corresponds to the reality of the historical situation and also to the normal use of the English language. It is plain on the above analysis of my first case that State "A" continues to possess every power of sovereignty which it does not cede to the Crown, and in my submission, the

realisation of this truth is fundamental to the relationship between the States and the Crown, and is, of all the propositions, the most important and the most far reaching. If this truth be firmly grasped it supplies the key of nearly all the problems raised by the first branch of the Terms of Reference.

Theoretically it would be conceivable for State "A" which, *ex hypothesi*, was at the moment before entering into relationship with the Crown, wholly independent—i e, possessed of the totality of sovereign powers—having transferred the whole of its sovereignty to the Crown and to receive back from the Crown a re-grant of specific and limited powers of sovereignty, the residuary sovereignty, for reasons identical with those already mentioned, then remaining with the Crown But the simple answer to this theoretical suggestion is that it is untrue in fact, except for a few wholly exceptional cases which I will deal with in a moment. No Indian Sovereign did any such thing Indeed it is obvious that unless compelled to do so it would be most improbable that any Indian Sovereign would think of doing it But the Crown never in fact dreamt of suggesting any such arrangement It is only necessary to have in mind the history of the British power in India, and the fact that till the beginning of the nineteenth century Great Britain was nowhere near achieving a position of power which would have made such a proposition to the larger Indian States practical politics. Indeed the policy of the Company at that time was not to seek but to avoid responsibilities—a policy summed up by Sir William Lee-Warner in his phrase of "the ring fence" And in the year 1818, after the final fall of the Mahratta power in 1817, when paramountcy first became a fact, in the sense that Great Britain was then the dominant power in India, a perusal of the very large number of treaties then made with important States is conclusive that, whatever powers were transferred, the treaties were in the nature of alliances, and no such thing as cessions of total sovereignty and re-grants of partial powers to the States concerned Article I of the Treaty of Udaipur, typical of all the Rajputana Treaties (see Aitchison, Vol III, page 30) in terms recognises the continued existence of the State of Udaipur in full sovereignty —

Article 1 "There shall be perpetual friendship, alliance, and unity of interests between the two States from generation to generation, and the friends and enemies of one shall be the friends and enemies of both." Article 2 says. "The British Government engages to protect the principality and territory of Oudeypore" The only derogations from his sovereign powers to which the Maharana then consented are to be found in the succeeding Articles

That the idea of a complete surrender of all sovereignty followed by a re grant of partial powers is mere theory, and has no reality in history, is further shown by the case of those States which, being possessed of complete sovereignty, did not happen to enter into any Treaty with the British Crown, as, for instance, Tripura whose Homeric epithet of "Independent" survived to a comparatively recent period It is obvious that Tripura never made a surrender of such a kind and that Tripura still retains the residue of its sovereign powers, i e every power of sovereignty which by tacit assent to the agreement of Paramountcy or other subsequent engagement it did not cede to the Crown There are other States in a similar position to Tripura.

The position of Mayurbhanj between 1817 and 1829 is again identical with that of Tripura It also was a whole-powered State and under its Treaty of 1829 its possession of full powers is plainly recognised by the Company. The fact that the Company, by the terms of the Mayurbhanj Treaty, did intend to recognise the possession by Mayurbhanj of complete sovereignty, except in so far as it had agreed to the Paramountcy of the Crown, is strikingly illustrated, as I pointed out during the last day's hearing, by a comparison between the Mayurbhanj Treaty of 1829 and the two Treaties with Nagpur of 1826 and 1829 In regard to Nagpur the Company claimed the right of dictating terms. (See the Preamble to the Treaty of 1826 reciting Appa Saheb's violation of public faith, and so on, "placing the State of Nagpur at the mercy of the British Government.") If there is any question on my Opinion which you would like to ask me, I shall be very glad to have the question put

Chairman · The term "residuary jurisdiction" which you are now amplifying and explaining is used in your Opinion In Paragraph 2 you say "The phrase 'Residuary jurisdiction' is sometimes used in official language In our opinion it is the State and not the Crown which has all residuary jurisdiction" That was the foundation of the questions I put.

Sir Leslie Scott: Quite I am much obliged, Sir, and I am doing my best to explain the reasons

Chairman Yes I understand this is amplification.

Sir Leslie Scott · I understood the desire of the Committee to be that I should give the reasons for that and I have put them down with some little care in order to make sure that you were in possession of what was in my mind. That was all.

Chairman. I only wished to tell you that our questions were based upon the terms of your Opinion.

Sir Leslie Scott I am obliged, Sir. In the case of Nagpur the Company was in effect purporting to exercise rights equivalent to those of conquest, and imposing what terms it chose upon the State, but even so the Court of Directors took the view that to take from the Ruler sovereign powers in the manner proposed was inconsistent with the intention of the British Government to restore the Bhonsla family to the *rank and position of one of the substantive powers of India*—as you see in Aitchison—showing that the policy of the Government even then was to recognise the continuing existence of full sovereignty of Indian Rulers, except only for certain specific powers the cession of which from all Indian Rulers was obtained by the Crown under its Paramountcy or other agreement.

Similar observations are applicable to the major States of Kathiawar. By Colonel Walker's Settlement, made in 1808 and confirmed in 1820, to which the whole of the States agreed, the Crown guaranteed to all the Kathiawar States the continuance of their powers and territory as they then existed, except in so far as by the Settlement itself the Kathiawar States entered into some at least of the provisions of the Paramountcy Agreement. Had all the States been in that position, it is plain that the Crown would have had to concede all powers that

still remained with the States, except in so far as such Fael Zamin Bonds and the subsequent tacit Paramountcy Agreement conferred certain powers on the Crown The survival of the States of Kathiawar without any Treaties is interesting because it throws that sidelight on this question.

If the second case to which I have referred, of the States like Mysore which was re-created, be contrasted with the case of the full powered State entering into an Agreement with the Crown, I venture to submit that the position is still further illuminated There was Mysore in 1799 and again in 1881, Pudukkottai in 1803, Nepal in 1815, Tonk in 1817, Satara in 1819, Garhwal in 1820, Rajpipla in 1821, Nagpur in 1826, Kolhapur in 1829, and again in 1862, Jhalawar in 1838, Benares in 1911 All those States were on those occasions either created or given their powers as an alternative to, in effect, annexation Some of them were entirely non-existent before they were created, as for instance Mysore, which had been conquered, and, for practical purposes, actually annexed Tonk which was given to the Pindari leader, Satara which was re-created, Jhalawar which was carved out of Kotah, whilst the other States were mostly cases where on account of gross disorder, or disloyalty, or other comparable reason, Government, as an act of State, claimed the right to deal with the States on its own terms. In all the above cases it was in fact open to the Crown, exercising superior force, to grant as much or as little in the way of sovereignty as it chose In most of the above cases it reserved to itself some measure of ultimate control for the administration of the State in the future, e g , by compelling the then grantee to bind himself and his successors to follow the advice of the British Government, but an interesting feature which emerges from a consideration of these differing cases is that sovereignty was granted as an entirety, subject to limitations definitely expressed, whether in particular or general language, reserving to the Crown such rights and no more as it chose to reserve out of the grant it was making "Residuary jurisdiction" in the sense of the residue of all sovereign powers not expressly named was, in all these cases, included in the general grant made by the Crown This conclusion is none the less true, that in some of these cases the powers which the Crown carved out of the grant which it made, and reserved to itself, were expressed in such general language that, if the results of the division were regarded rather than the question of which was the grant and which was the reservation, it would be correct to say that the greater part of effective sovereignty remained with the Crown This result is illustrated most clearly by the case of Mysore, as you know I will not trouble to go into that in detail, the powers reserved to the Crown were so general that one might be tempted to call them residuary jurisdiction or residuary powers You will have observed from what I have said in regard to what I call the re created States, I have indicated that on the true interpretation of the Treaties or Sanads conferring sovereignty on the grantee, general residuary jurisdiction was in theory conferred as part of the grant, but that on an analysis of the description of powers granted on the one hand, or reserved on the other, in some cases so much was reserved and so little granted, that the result in fact was almost the same as if the Crown had reserved the whole of the residuary jurisdiction and merely conferred certain isolated and specific powers of sovereignty

But whichever be the more correct view of the true nature of these particular transactions, the violent contrast between the general powers of control reserved by the Crown to itself, in some at least of these cases, with Treaties like the Rajputana Treaties of 1818 (even although they were made after the Crown had, in fact, become the dominant power in India) shows that the transaction in the latter case was wholly different in kind and not in degree from the former. In the one case it was a grant of limited sovereignty, in the other it was an alliance coupled with protection, in return for a cession from the State of sovereign powers in relation to foreign affairs and military defence, leaving otherwise complete sovereignty vested in the allied State.

In the last of the three cases I have discussed, that of the State in the tributary or dependent position to some other State at the time when it came first into relationship with the British, except for the bare fact that it was in some degree of subordination to a third State, I submit that that State is in the same position as the first case that I took of a full powered State. In so far as the State so contracting agreed to the Crown taking the place of its former suzerain, that agreement was merely an additional term of the contract, but there is no ground, it is submitted, for saying that the general reasoning applicable to case (i) does not apply equally to case (iii) subject only to the qualification that in some of the Treaties with such States, or with their suzerains, the Crown became entitled to exercise the powers hitherto exercised by the other suzerain State.

Sir James Peile in a report to Government, quoted an observation made by the Resident at Baroda, just before the Walker Settlement in Kathiawar, to the following effect.—" With the reservation of their acknowledged tributary payments, the Kathiawar States are independent, and at liberty to form connections with other powers. They are under no obligations of service, and neither Peshwa nor the Gaekwar pretend to exercise an authority in Kathiawar, beyond the demand of their respective contributions " (Kathiawar Directory, Part I (1886), p 14; 8 Bombay Law Reporter, p 183, 198 and 200-1) Colonel Walker also in his Report of the 20th July, 1806, states:—" The tribute payable to the Mogul or Mahrattas does not affect the independence (of the Chief)."

See also the following extracts from Note attached to letter from Government of Bombay to Government of India, No 3590 of the 15th October, 1863 —

" Authority of the Chiefs "

" Except in the payment of their Jummabundee, the Chiefs such as Rajas, Rawals, Thakoors and Grasias were in possession and exercise of every interior right of sovereignty. As far as history or tradition can be adduced as evidence, it is my opinion that both will prove the Chieftains of the peninsula of Kattewar to have always been in respect to their municipal economy perfectly independent of the powers which have successively enjoyed the supremacy of Guzerat, the utmost of their submission being the payment (when exacted by the presence of an army) of tribute to obtain the forbearance of a power whose goodwill it was an object to conciliate, because the consequences of its enmity were to be feared."

In order to prevent misconception it is perhaps as well to add here that care is needed to guard against loose thinking about powers of suzerainty and obligations attaching to a subordinate. A tributary is not a feudatory, and it is common ground with all authorities on Indian affairs that the mere payment of tribute did not involve any cession of sovereign powers in internal affairs, even although there may have been encroachment upon the tributary's rights by the power receiving tribute Illustrations of this rule, which is generally accepted, are afforded by some of the States of Rajputana which paid tribute to Scindia, and by States in Kathiawar where the State of Porbandar pays tribute to the Taluka of Mangrol, and Nawanagar pays tribute to Junagadh. The word "feudatory" has been used and misused In its proper sense it usually connotes limited sovereignty received from the suzerain State for some consideration such as military service. But in any given case careful historical investigation is probably required in order to ascertain whether the so-called feudatory is, properly speaking, in its true right a State with limited powers, or a full-powered State whose true powers have become temporarily ignored in the course of history The position of the so called "Feudatory States of Bihar and Orissa" is an illustration of the need of care since in their case, if the Agreements of 1803 are accepted as a criterion in accordance with the submission already made to you, they ought not to be regarded as feudatory

It should of course, be borne in mind that no tributary or feudatory could, by any Treaty into which it entered, effect the transfer or assignment to the Crown of any of the rights of its suzerain Whether such rights can properly be regarded as assignable by the suzerain to the Crown, with the consent of the dependent State, may be open to some doubt If the rights of the suzerain had obligations attaching to them, it is obvious that the suzerain could not transfer those rights to the Crown unburdened by the obligations, without the consent of the dependent States also But as a matter of historical fact I think that after the fall of the Peshwa, and the transfer by him to the Crown of all his rights, agreements were made by the Crown with most of his dependent States by which they agreed to the Crown stepping into the position of their former suzerain

The preceding observations will probably suffice to make good the submission that the main position as submitted under case (i) is in no way affected by the wholly separate question of the complication introduced into the position by reason of States, when they first came into contractual relationship with the Crown, being already in some degree of subordination to a third State

I handed to you, Sir, on the last occasion a little note containing references to some of the chief States which were created or re-created by the Crown in the sense in which I have used that expression I thought it might be included as an Appendix to my speech it might save trouble For your convenience I put in it a resume of the chief clauses of the Treaties of what I call the re-created States, including in that expression States which were in existence, over which the Crown then claimed the right to dictate terms (See Appendix "X")

Those are the considerations applying to the question of residuary jurisdiction in the sense of residuary powers of sovereignty, and for those reasons I submit that the sentence in the Opinion ("In our,

opinion it is the State and not the Crown which has all residuary jurisdiction ") is correct.

In the narrower sense of civil and criminal jurisdiction, I should like to add a little. In my submission there has been much confusion of thought about the whole subject of civil and criminal jurisdiction. It almost looks as if certain elementary legal principles had never been realised May I put a few points before you? No ex-territorial jurisdiction can be enjoyed except by the consent of the local sovereign in any country, which is what Piggot calls a governed country as distinct from a savage country where there is no Government. In all other cases jurisdiction is purely territorial

There has been a recent decision in the Permanent Court of International Justice at the Hague, with which Professor Holdsworth no doubt is familiar, which I venture to commend to your attention as containing much very sound law. You remember the case of a collision in the neighbourhood of the Island of Mitylene, but on the high seas, between a French ship called the " Lotus " and a Turkish ship called " The Boz-Kourt " in which by negligence on the part of both ships the " Boz-Kourt " was sunk with loss of life, with Turkish subjects on board, the " Lotus " proceeded into Constantinople and the navigating officer of the " Lotus " who had been on the bridge at the time, was there arrested and criminal proceedings were taken against him for homicide

The question referred to the Hague Court was firstly whether the Turkish Courts had jurisdiction to entertain the prosecution, and secondly, if they had not, whether money compensation ought to be paid The Court were equally divided on the subject, but by the casting vote of the President decided in favour of the Turkish view. Lord Finlay dissented, and Mr. Loder, who was the first President of the Court, whose name you all know so well, dissented; Mr. Moore, the American Judge dissented, and those three judgments particularly contain much valuable light upon English law about jurisdiction, and the international law about jurisdiction as recognised in English Courts I will not trouble you to go through the case at length; I will hand my copy to Professor Holdsworth or get a copy for him.

Professor Holdsworth: I have not got the actual official print, I have read several articles about the case

Sir Leslie Scott · It is in the 10th number of the Reports of Decisions of the Permanent Courts of International Justice, Series A.; it was in 1927.

Professor Holdsworth: I will get it probably in the library.

Sir Leslie Scott · If you would not mind noting down the chief pages; they are, Mr. Loder, pages 34 and 35; Mr. Weiss, pages 44 and 45; Lord Finlay, pages 55 to 58; Mr. Nyholm, the Swedish Judge, page 60; Mr. Moore, pages 68 and 69, 91 and 92.

On the main aspect, so far as relevant to your Inquiry, there is no difference of view between the majority of the Court and the dissentient judges, so we need not trouble about what the reason of difference of opinion was in that particular case. But Mr. Loder, whose reputation on the Continent as a Jurist of the very first class is unrivalled, on page 34—I am quoting from the English version—talking of international law, says this: " This law is for the most part unwritten, and

lacks sanctions; it rests on a general consensus of opinion, on the acceptance by civilized States, members of the great community of nations, of rules, customs, and existing conditions which they are bound to respect in their mutual relations, although neither committed to writing nor confirmed by conventions. This body of rules is called international law. These rules may be gradually modified, altered or extended, in accordance with the views of a considerable majority of these States, as this consensus of opinion develops, but it seems to me incorrect to say that the municipal law of a minority of States suffices to abrogate or change them It also appears to me incorrect to claim that the absence of international disputes of diplomatic difficulties in regard to certain provisions of the laws of some States, which are at variance with generally accepted ideas, can serve to show the development or modification of such ideas International *disputes* only arise when a particular *application* of the laws in question shows them to be at variance with international law The family of nations consists of a collection of different sovereign and independent States. The fundamental consequence of their independence and sovereignty is that no municipal law, in the particular case under consideration no criminal law, can apply or have binding effect outside the national territory This fundamental truth, which is not a custom but the direct and inevitable consequence of its premises "—that is the independence of each State—" is a logical principle of law, and is a postulate upon which the mutual independence of States rests The criminal law of a State applies in the first place to all persons within its territory, whether nationals or foreigners, because the right of jurisdiction over its own territory is an attribute of its sovereignty. The criminal law of a State may extend to crimes and offences committed abroad by its nationals, since such nationals are subject to the law of their own country, but it *cannot* extend to offences committed by a foreigner in foreign territory, without infringing the sovereign rights of the foreign State concerned, since in that State the State enacting the law has no jurisdiction Nor can such a law extend in the territory of the State enacting it to an offence committed by a foreigner abroad should the foreigner happen to be in this territory after the commission of the offence, because the guilty act has not been committed within the area subject to the jurisdiction of that State and the *subsequent presence of the guilty person* cannot have the effect of *extending the jurisdiction of the State.*"

It seems to me clear that such is the logical consequence of the fundamental principle above enunciated It however is also clear that this consequence can be overridden by some convention to the contrary effect, or by some exception generally, and even tacitly recognised by International Law Like all exceptions, however, such an exception must be strictly construed, and cannot be substituted for the well established rule to which it is an exception I think I had better read the next sentence "The rule has gradually undergone important modifications in the legislation of a somewhat large majority of civilised States, a modification which does not seem to have encountered objections, and which may be regarded as having been accepted The modification tends to except from the strict rule governing the jurisdiction over offences committed by foreigners abroad such offences, in so far as they are directed against the State itself or against its security or credit The injured State may try the guilty persons according to its own law, if

they happen to be in its territory, or if necessary, it may ask for their extradition Apart from this exception, the rule holds good." That is only as to the offences against the State itself. The important sentence is "Apart from this exception, the rule holds good." There is nothing more I want to read from the Judgment. I am not going to read the others I am only going to read two or three passages from Lord Finlay's Judgment and then Mr Moore's. This is on page 55: Lord Finlay says "The passing of such laws to affect aliens is dependent on the ground that they are necessary for the 'protection' of the national" This is very similar to what you get in India: "Every country has the right and duty to protect its nationals when out of their own country If crimes are committed against them when abroad, it may insist on the offenders being brought to justice; but this must be done in the proper way, and before tribunals having jurisdiction. The Government of the country of the injured person is entitled to bring pressure to bear upon the Government of the offender to have him brought to justice, but it has no right to assert for this purpose in its own courts a jurisdiction which they do not possess." That, you see, applies for instance, to the claim of the Court to try Europeans or Americans committing crimes in the States They have no right to "The Law of Nations does not recognise the assumption of jurisdiction for 'protection', there never has been any such general consent by the nations as would be required to make this doctrine a part of International Law Any State which finds it necessary to acquire such a power should by convention get the consent of the other States affected Such a Convention would, of course, have to define the limits and conditions affecting the exercise of the power. A country is no more entitled to assume jurisdiction over foreigners than it would be to annex a bit of territory which happened to be very convenient for it" Then, at the end of his Judgment, he says: "Of course, every country has the right to protect the persons and the property of its citizens If a wrong is done, the State may demand redress and enforce it. But the assertion that any State can, by any law of its own, assume criminal jurisdiction in respect of alleged crimes committed abroad or on the high seas is a new one. The Government of the country of the injured person may call upon the Government of the country where the injury was committed to have the offender punished in due course by law, but it cannot make laws for their punishment in its own Courts except in pursuance of a convention with the other Powers affected" That paragraph at the end of Lord Finlay's Judgment, which I have just read, in my submission shows the whole of the claim by the Government of India, to ex-territorial jurisdiction over Europeans and other foreigners and also over British citizens in the States where they have no treaty conferring jurisdiction, to be unfounded If there is no such right in international law between independent States without consent, *a fortiori*, there is no right when the relationship is one which is defined by consent and by contract, as in the case of the Indian States and the Crown.

Professor Holdsworth There is one point I should like you to clear up. Suppose you have an American, we will say, in an Indian State, and suppose there is a complaint by the United States Government that he has not been properly tried or fairly treated, the British Government

would be held responsible for that. Therefore, as part of your Paramountcy agreement, would not it be necessary for the British Government to exercise some sort of control over the jurisdiction, so that they should not be exposed to a diplomatic claim of that kind?

Sir Leslie Scott It would be expedient for them to get consent from the State to do so

Professor Holdsworth · You do not think the fact that they may be held responsible by the foreign State if any injustice is done to one of its citizens makes any difference?

Sir Leslie Scott ·At first sight, that sounds an attractive suggestion in a legal sense, but I venture to submit it is wrong for this reason Take any particular Treaty which illustrates it, such as the Udaipur Treaty You have two clauses (1) The surrendering of foreign relations to the Crown; (2) An equally definite undertaking by the Crown that Udaipur shall be absolute Sovereign within his own territory, you have to harmonise those two My submission is that the only way you can harmonise them is by the ordinary principle of contract law of making up your mind as to whether the conditions are separate or conditional one upon the other. You must say that the power conceded to the Crown to make agreements binding upon the State is always subject to the limitation that the agreement so made shall not interfere with the internal affairs of the State To claim jurisdiction within the State is to interfere with the internal sovereignty of the State That is the reason why a slavery convention or an opium convention was admitted by the British representatives at Geneva to be one in respect of which they could not bind the States You remember the passage that was cited That is the ground I venture to suggest that is the true legal view You must read the generality of the powers of conducting foreign affairs conceded to the Crown as subject to that limitation, and you arrive at the result that it may be very desirable, for such reason as you suggest, for the Crown to go to the States and say · "Now foreign powers may make great trouble unless the criminal jurisdiction over persons within your territory is exercised with the same degree of efficient and impartial justice as in the County of London, and we must have some arrangement about it" The State may say "Well, my Courts are not yet quite as good as the Courts in the neighbouring Province of British India, but in two or three years' time they will be, and I will make a temporary arrangement certainly" Take one of the States to-day, where the administration of justice is up to the very highest level There are many of the States—I will not mention any names because it would be invidious to those which are not mentioned —where the administration of justice is extraordinarily good Why should that State confess "My Courts are incompetent to try a person as well as the Courts in British India" That is respectfully my answer

Professor Holdsworth I understand

Sir Leslie Scott Then Mr Moore's whole Judgment is very interesting On page 68 he says "It is an admitted principle of International Law that a nation possesses and exercises within its own territory an absolute and exclusive jurisdiction, and that any exception to this

right must be traced to the consent of the nation, either express or implied" He quotes the famous Judgment of *Schooner Exchange* v. *McFaddon* in 1812, reported in 7 Cranch. Then: "The benefit of this principle inures to all Independent and Foreign States, and is attended with corresponding responsibility for what takes place within the national territory." I pause for a moment to say what that rule of International Law, accepted in the Municipal Law of America and of this country, is as applied to the case of the Indian States. Take a full-powered State, any one of them, such as Gwalior or a Rajputana State, coming into relationship with and making its first treaty with the British Crown It came in with these rights—they are defined—laid down in 1812, for all to learn who could read. What has it done to give them up since? If it has not consented to give them up since, it has still got them That is the relevance, as it seems to me, of these principles of International Law. You get the measure of powers which the States had when they came into contact with the Crown. The principles of International Law are many of them legal principles of basic character, applicable because they are principles to all conditions of States or individuals, in many instances Then, on page 68 Mr. Moore says: "It is an equally admitted principle that, as Municipal Courts, the creatures of municipal law, derive their jurisdiction from that law, offences committed in the territorial jurisdiction of a nation may be tried and punished there, according to the definitions and penalties of its municipal law, which, except so far as it may be shown to be contrary to International Law, is accepted by International Law as the law properly governing the case. This principle is not contrary but is correlative to the principle laid down in unanimous decisions of Municipal Courts, that International Law is to be considered as forming part of the Law of the land, that it is, as such, to be judicially administered in all cases to which it is applicable, and that municipal enactments ought not to be so construed as to violate International Law, if any other construction is possible The principle of absolute and exclusive jurisdiction within the national territory applies to foreigners as well as to citizens or inhabitants of the country, and the foreigner can claim no exemption from the exercise of such jurisdiction, except so far as he may be able to show either that he is, by reason of some special amendments, not subject to the operation of the local law. No presumption of immunity arises from the fact that the person accused is a foreigner." Then if it be suggested that there is a concurrent, or that there might be a concurrent, jurisdiction of the British Indian Courts, or of the Government of British India, to set up Courts in the States, Mr. Moore objects to the protective theory, as it is called, which destroys that argument, just as much as Lord Finlay does. On page 92 he says "But to assert that this right of jurisdiction covers acts done before the arrival of the foreign subjects in the country, is in result to set up a claim of concurrent jurisdiction with other States as to acts done within them, and so to destroy the very principle of exclusive territorial jurisdiction to which the alleged right must appeal for support" He is quoting Hall there. Then: "It will be observed that Hall founds his disapproval of the claim mainly on its assertion by one nation of the right of concurrent jurisdiction over the territory of other nations. This claim is defended by its advocates, and has accordingly been defended before the Court, on what is called the

'protective' principle, and the countries by which the claim has been espoused are said to have adopted the system of 'protection.'" What, we may ask, is this system? "In substance, it means that the citizen of one country, when he visits another country, takes with him for his own protection the law of his own country, and subjects those with whom he comes into contact to the operation of that law In this way, an inhabitant of a great municipal city, in which foreigners congregate, may in the course of an hour unconsciously fall under the operation of a number of foreign criminal codes This is by no means a fanciful supposition, it is merely an illustration of what is daily occurring, if the protective principle is admissible It is evident that this claim is at variance not only with the principle of the exclusive jurisdiction of a State over its own territory, but also with the equally well settled principle that a person visiting a foreign country, far from radiating for his protection the jurisdiction of his own country, falls under the dominion of the local law, and, except so far as his Government may diplomatically intervene in case of a denial of justice, must look to that law for his protection. No one disputes the right of a State to subject its citizens abroad to the operations of its own penal laws if it sees fit to do so This concerns simply the citizen and his own Government, and no other Government can properly interfere But the case is fundamentally different where a country claims either that its penal laws apply to other countries and to what takes place wholly within such countries or, if it does not claim this, that it may punish foreigners for alleged violations, even in their own country, of laws to which they were not subject"

May I shortly submit that that case destroys the claim of the Government to exercise, as of right, without the specific consent of the State, jurisdiction within the State at all, whether it be over British Indian subjects, European British subjects, Europeans, Americans or any other foreign subjects. Because there is a section in the Indian Penal Code making it an offence to commit a crime in a Native State, we have seen an attempt to read that as of itself conferring on the Government of India a right to try persons within the ambit of that section in the Native State My submission is that the only effect of the section is to enable a British Court to try such a person when he comes within British territory, but that they have no power to try him in the Indian State, nor have they power to ask the Indian State for extradition. There is a great deal of authority for this view to be found in text books and decided cases Some of it is mentioned in *the "Lotus" judgments and some of it is not There is too much of* it for me to go into now, and so, with your permission, I propose to put it in as a separate print, but as part of my submissions to you (See Proceedings of 27th November)

I now come to certain specific heads of jurisdiction, such as Railway jurisdiction, Cantonments, etc

The point I want to emphasise is that the Government has not gone the right way about getting the jurisdiction it wants That is the authority that I thought would be sufficient on the broad proposition that there is no exterritorial jurisdiction except by the consent of the local Sovereign, and that jurisdiction within the territory extends to every person physically present in the territory. Therefore, whereas on the one hand the Government of India has no jurisdiction over

Europeans committing offences in the States, on the other hand each State does possess that jurisdiction.

The second point is that all attempts by the Government of India, either to take jurisdiction without consent or to force Indian States into consenting, must be wrong. That applies not merely to trials of Europeans, of course, but to the general question of jurisdiction—the former because consent being essential, such attempts can confer no title, the latter because it is an unjustifiable use of force, a breach of the agreement not to interfere in internal sovereignty, and cannot give rise to true consent. You have in mind the pressure that was put, for instance, on Patiala to sign the railway cession in the prescribed form in 1889, the form that was invented after the Hyderabad case, and many cases, which we came across in the evidence, of claims to take jurisdiction without consent

That proposition is equally true, in my submission, whether the jurisdiction is one in respect of all persons within a defined area, like railway or cantonment or Residency areas, or over defined classes of persons anywhere in the State, like Europeans or British subjects

As territorial jurisdiction extends to all persons within the territory, the claim by the Government of India to exercise within the territory of a State jurisdiction over a class of persons without any antecedent cession by the State must be invalid. There is no ground known to either English municipal law or international law to justify the claim by the Government of India to exercise jurisdiction in Native States over either British Indian subjects, European British subjects or foreigners, unless the right has been ceded to it.

Sir William Lee-Warner's argument, that the claim to exercise jurisdiction over foreigners may be derived from the cession of foreign relations to the Crown, I have dealt with and I will not repeat it.

In any case where the State cedes jurisdiction the Government of India exercises the privilege, not in its own right, but as delegate of the State and on its behalf This, it is submitted, is plainly the right view of the cession of jurisdictional powers made by all the States of Kathiawar in the middle of the nineteenth century. That was in 1867. It may be open to doubt whether they consented expressly to the classification arrangements then made, but if they did not give any consent at that time, the documents and arguments set forward in the Hemchand Appeal to the Privy Council in 1905 seem to establish that the whole of the arrangements were made for and on behalf of the different States on account of the difficulties they had at that time from their insufficient organisation of justice, and it is possible that subsequent history may be evidence of ratification and acceptance, *ex post facto*, of the arrangements then made, which would be equivalent to antecedent consent. The system of appeals from the Courts of some of the States to the Courts of the Political Officer from a decision of the State Courts would seem to support the general view that those arrangements were consented to; but in saying that they were probably consented to one must be very careful to be sure what one means. My submission is that it was a consent of a temporary kind, and that the States would be entitled to say: "Now we have got our administration of justice up to a very high level there is no need for these exterritorial arrangements continuing any longer, and we claim the right to bring them to an end and to terminate your exterritorial jurisdiction." Perhaps

you will look, Sirs, at the documents referred to and the quotations in the Hemchand case in the eighth volume of the Bombay Law Reporter.

Professor Holdsworth That is in Appeal Cases in the Privy Council, is it not?

Sir Leslie Scott It is not reported in the Law Reports; at any rate, it is very short

Professor Holdsworth It is in 1906 Appeal Cases I think that is the case I have read

Sir Leslie Scott What is interesting about the report in the Bombay Law Reporter is the argument of Mr Birdwood, as he then was, that is most illuminating But I venture to submit there that you can see the inclination of the Court to take the view put forward by Mr. Birdwood that it was a temporary arrangement in which the Crown was, so to speak, deputising for the various States in the administration of justice for them The Courts were really Courts of the States conducted by the British Government on behalf of the States, and it was *a temporary arrangement* You will remember the despatch of Sir Charles Wood relating to the classification of the States in the middle of the nineteenth century when that was decided on by the Bombay Government and approved by the Government of India, and he wrote a despatch saying: This is an interference with the sovereign rights of the States and in effect said: We must not regard it as a permanent thing. That aspect of cessions of jurisdiction, that they are temporary, pending the arrangement of a high standard of local administration of justice, is, I submit, very important Politically it has more direct importance than many of the legal questions that I have been arguing The legal questions are only important in order to establish the fundamental *position that everything depends upon the consent of States.*

There is another aspect of jurisdiction which has to be considered in this context. That is this. Where there is a cession of civil and criminal jurisdiction, what criteria are to be applied in order to ascertain what legislative effect and what executive effect is intended to go with it? Take the Railway cases Where the State agrees to transfer civil and criminal jurisdiction, presumably it is the intention of the State that the law applicable to the trial of offenders prosecuted in the Courts so set up should be the British Indian law But how far is that to go? My submission is that it must be limited. Similarly with regard to executive action, presumably it is intended that the railway police should have the right to arrest an offender and bring him before the Court But there are limits to both. My submission is that the limit is to be found by applying the principle that the grant must be *interpreted according to the purpose for which it is made,* that its being an exception from the territorial jurisdiction of the State you must interpret it on the footing that nothing more is conceded by the local Sovereign than is absolutely necessary for carrying out the main purpose of the cession You remember that that principle was applied in the Hyderabad case, the Yusuf-ud-din case: it was there pointed out that the only jurisdiction that was granted was a jurisdiction for railway purposes. The same principle, in my submission, must apply to every grant of the kind Might I, to save time, hand in a note with a few references to be printed?

Chairman: Certainly.

The following note was handed in by Sir Lesie Scott:

One of the first principles in construing a grant is to look to the purpose for which the grant was made, and the event or circumstance which gave rise to the necessity for it.

"It is always legitimate to look at all the co-existent circumstances in order to apply the language and so construe the contract." (*Lewis v. Nicholson* (1852) 18 Q B 503, at page 510, per *Lord Campbell*).

" . the language used in a contract is the language used to another in the course of an isolated transaction and the words must take their meaning from those things of and concerning which they are used and those only" (*Grant v. Grant* L.R. 5 C.P. 727, at page 729, per *Lord Blackburn*)

The whole *raison d'être* of the grant in the present cases is the fact that a railway crosses certain territory.

Hence the object of the grant must be something *connected with the carrying on of the railway*, and in order for the grant to convey any powers not so connected, clear and unambiguous language would have to be used It is absurd to suppose, in the ordinary way, that rights practically indistinguishable from full sovereignty can have been intended to be ceded over land merely because a railway crosses it, and for purposes totally unconnected with the object of the grant

The only objects connected with the carrying on of the railway which in any way spring to the eye are:—

(a) Those concerned with the safe and efficient conduct of the railway as such

(b) The exercise of "jurisdiction" over railway employees, and persons temporarily using the railway, or land adjacent to it *and included in the grant for purposes of convenience.*

Hence the jurisdiction is *not* primarily over a piece of land as has been suggested It is primarily over a railway *and* for the purpose of properly carrying on the railway. The two must be taken together. In fact jurisdiction over any given piece of territory only exists by virtue of and for the purpose of carrying on the railway.

Therefore, *and quite apart from any construction which may be derived from previous correspondence between the contracting parties*, it seems to me that any cession of a full and exclusive power and jurisdiction of every kind over railway land (vide Common Form) must nevertheless be interpreted in the light of the primary object and whole *raison d'être* of the grant. It means "full and exclusive power and jurisdiction of every kind" *for the purpose of carrying out the object of the grant*, viz, the proper carrying on of the railway. It does not confer "full power and jurisdiction" etc, for purposes unconnected with the carrying on of the railway, unless clear language to that effect were used.

To put the matter differently, the grantee power requires a cesser of jurisdiction *for a certain purpose.* Having obtained it, it cannot then turn round and use the jurisdiction so conferred for some quite different purpose The width of the terms of conveyance only means that the grantee has full powers for the required purpose

Applying this principle it would seem to follow that the grantee power would probably have the right to establish post and telegraph

offices and refreshment rooms along the line, and to make regulations for the carrying on of the same (e.g., as to drink hours)

On the other hand the introduction of the grantee's fiscal law or the exercise of any powers of taxation would seem unwarranted.

The exercise of civil and criminal jurisdiction and of certain police powers over railway employees and persons using the railway is also clearly justified, but it must be a matter for careful consideration what the exact limits of jurisdiction in this respect are, and particularly as to how far the law of the grantee power is to apply

One fundamental principle occurs to me here. So far as jurisdiction is exercised over *Europeans* on the line, it must be admitted that there is a reason over and above necessities of discipline, viz, that Europeans should be tried according to their own law, or some law akin to it. (This is one of the fundamental objects of all extra territorial jurisdiction such as, e g, Consular Jurisdiction in Oriental countries). *Surely a reciprocal right must be granted to natives on the line,* and in particular as to those questions in which their law fundamentally differs from European or English law, i e, status, family relations *(marriage divorce, etc), religious obligations and so on On the same* principle it may become a question as to how far the ordinary civil liabilities of natives are to be determined by their own law

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Sir Leslie Scott Applying the principles that are contained in the foregoing note in the case of a railway, you would interpret the grant as giving whatever was reasonably necessary for railway purposes and no more: in the case of a cantonment, whatever was necessary for the discipline of the troops and no more, in the case of a Residency, whatever is necessary to carry out the ordinary system of diplomatic immunities from the jurisdiction of the country, to which the Diplomatic Agent is accredited. My submission is that the tendency of the Government of India, when it has received a cession of jurisdiction, is to use that jurisdiction for all kinds of other purposes, to claim a civil and criminal jurisdiction over all persons within the area regardless of the purpose for which the cession was made, or to claim the right to pass legislation generally, to impose taxation generally, or generally to carry on the executive functions of Government. All those claims are wrong and in history I cannot help feeling that these questions of jurisdiction have been as grave a cause of trouble to the Indian States as any single cause there has been. The indirect reactions are so serious in destroying the prestige of the State, of its judges and magistrates, of its police, and generally of all its executive officers, and the moment you had the rule clearly laid down and followed, that the grant of jurisdiction must be strictly interpreted against the Crown because it is in the nature of an exception that the Crown is putting forward and asking for—it is *contra proferentem*—the moment you had got that principle applied, and rigidly applied, you would get over a great deal of the trouble You will remember, Sirs, in many of the cases how bitter have been the complaints and, of course, the extent to which the misconception of the legal position can lead the Government in practice is, I venture to say, often appalling to a lawyer who ventures to expect the reign of law or to regard it as a desirable thing.

Can anything worse be conceived than the history of railway jurisdiction in Patiala? I recall your memory to the letters passing in

different years, beginning with the explicit assurance that no sovereignty is to be taken away and that it is only wanted for dealing with railway cases on the line, leading up to that inconceivably wrong letter written, no doubt under instructions, by the Political Agent on the 13th November, 1917, both to Jind and to Patiala (No. 7564), in which the State is calmly told. "You have given over the whole of your sovereignty, you have got nothing left except sovereignty in name, and you never will have anything more so long as the railway is there" That is an abuse of the gravest kind which ought not to be possible and I venture to say that the reason it has been possible is that the Government of India has not had its mind on the legal position sufficiently.

In my view the fundamental question affecting all these States is the legal question What are the rights and what are obligations of the two sides? Once they can be known on that basis, reasonable arrangements can be made by consent to solve every difficulty. And as you know, Sirs, the Standing Committee say deliberately: "We are willing to make reasonable arrangements once our rights are acknowledged, and the legal realities of the position realised and permanently established."

I took this question of jurisdiction both because the Committee asked me to deal with it and because it seems to me to be very important. The result is, in my submission, that there is no alternative to the view expressed in the Opinion that, in every sense of the word, residuary jurisdiction rests with the States and not with the Crown And in that context, Sirs, may I call your attention to what I submit is the entirely erroneous view and fallacious reasoning of Sir Lewis Tupper in his published work entitled "Our Indian Protectorate" which was published by Messrs. Longmans, I think, in 1893 As I said in opening, I assume that that published work contains the same views as are secluded in the secrecy of his "Political Practice" which the Standing Committee have not been allowed to see.

On page 6—I am not sure that my pagination is the same as in the printed copy—he says this: "The fact is, that for the adjustment of the relations of the continental States of India a new system"—as distinct from International law—"has grown up, very different from any which was possible in the days of Edmund Burke, but, it is believed, quite as much in accord with the principles of reason and morality as the Western system, which determines the relations of European independent States and other like States of the civilized world To the rules and principles which constitute the new system I shall throughout the treatise give the name of Indian political law. That expression, though occasionally used in official documents, has not yet acquired any general currency. It is therefore open to all the objections of novelty. I am aware that the expression may not be regarded as a particularly happy one; for the word 'political' is used in the technical sense in which it is commonly used in India, but not elsewhere. In India we have long meant by political business, business connected with the Native States, and by Political Officers, officers charged with that business If there were diplomatic relations between independent States in India and the British Government, the Political Officers would be diplomatists and their business would be diplomacy. There

are no independent States within the Protectorates, so the relations between the States and the paramount power are not diplomatic but political I adhere to the expression Indian political law, mainly because it appears to me less objectionable than any other with which I am acquainted for the description of the same thing Such a phrase as Indian international law is misleading Indian States are not nations; and any compendious name for the Indian substitute for international law should mark the fact that the relations between the British Government and its Indian feudatories are governed by another law, and not by international law as generally understood. The term 'interstatal law' is more cumbrous and, perhaps, even more objectionable on substantive grounds It would, I suppose, literally mean the law applicable to the relations of the Indian States one with another, but it is of the essence of the whole system that they have no such relations As already said, they have no foreign relations except with the paramount power, and if the law regulating the only set of foreign relations which they have is described as interstatal law, that seems to put the paramount power on a level with the States and to count it as one State amongst a number, which is quite contrary to the fact Possibly the expression 'interstatal law' if used at all, might be used to denote certain rules for extradition, and for the disposal of cases in which more than one State, or the subjects of more than one State, are concerned But the States themselves cannot frame such rules by diplomatic discussion and agreement They must proceed through the intervention of the paramount power, and any such rules must be founded on agreements separately made with the British Government by each State concerned or must be authoritatively prescribed by the British Government itself Accordingly, by interstatal law I should mean only a part, and a small part, of Indian political law For all these reasons I use the expression Indian political law to denote the rules and principles governing the relations which now exist between the British Government and the Indian feudatory States." Having so defined his phrase "Indian political law" on page 9 he says this: 'I am here considering Indian political law merely as so much positive law—as the law which, as a matter of fact, now obtains, and which has to support it the sanctions which can be exercised by a supreme political authority It is not open to the objection sometimes raised against international law, that it is in fact no law, because nations have no common superior capable of enforcing the supposed precepts The superior is there and the precepts can be enforced without difficulty. But if in this respect Indian political law has a more definite shape than international law, it is also much more definite in the matter of expression Some of the sources of political law are, indeed, open to any one who brings industry and perseverance to the prosecution of research A great deal of matter is to be found in the published despatches of the Indian Government, in various Parliamentary blue-books, and in the well-known histories of India. The great work of reference is the collection of treaties, engagements and sanads by Sir Charles Aitchison " Then he refers to various books of history and ends the passage in this way ' But the source of this law which has supreme importance, is without doubt usage—the actual practice of the Indian Government in its dealings with its feudatories. This usage is ascertainable partly from some matters of history and notoriety,

but mainly from the records of the Government and a variety of minutes and notes and compilations of a confidential character prepared by competent authorities in the course of their official duties. The records and documents of this description are not, of course, open to the public."

Now, Sir, my submission is that from beginning to end that view is wrong The notion that the States should be under a system of so called political law, there based upon authorities which are contained in Government documents which are kept secret from them and which are not open to the public, is something monstrous. It is tantamount to saying this, that the Indian States are bound to do whatever the *Government in its discretion decides they ought to do. If you want* to know the law by which they are bound, up to now, you must find out the effect of the decisions and usages and practice of the Political Officers based upon them in the past, always remembering that they may be altered in the future I submit that is no travesty of what he says. No doubt the book or its equivalent is available to the Committee.

If you look at pages 12 and 13 you will see he gives a list of things that a State may be called upon to do and then says in regard to them this I think I had better read the passage; it is so important really. He does not say that they are already bound to do these things, but he says that the States may be called upon to do them at any moment and have to do them " In addition to the universal duties of allegiance and subordination, he might be bound to keep troops ready to serve with the British Army when required. He might or might not have to pay tribute His State would have to pay a fine on any succession which was not in the direct line. The privilege of adopting a successor or failure of heirs would be recognised by imperial grant or *sanad* The Raja, as I may call the supposed Chief, would not have the right of building new fortresses or strongholds, or repairing the defences of existing fortresses or strongholds, except with the previous permission of the British Government He would give, free of all charge, lands required for main roads of communication, railways, telegraphs, and British cantonments, and in these cantonments and on railways constituting parts of a through line of communication he would leave all jurisdiction to be exercised by British authorities. In employing a military force for the maintenance of internal order and his personal dignity, or for any other purposes, he would not exceed the strength which might be fixed from time to time by the Governor-General in Council He would abstain from entertaining in his service (except *upon permission) any person other than a* native of India. He would not interfere with the affairs of any other State or power, and would have no communication with any other State or power, except through the medium of the British Government. He would, on demand duly made, cause to be arrested and surrendered to the proper officers of the British Government any person within his territories accused of having committed an offence in British India. Plenary jurisdiction over European British subjects in his territories would be vested in the Governor-General in Council; and in respect of these persons the Raja would exercise only such jurisdiction as might be delegated to him by that authority.

The connection of most of these rights and obligations with the general principles already mentioned is, in most instances, sufficiently

obvious; in some cases I shall hereafter offer explanations of that connection Questions of military service, tribute and adoption would usually be settled by treaty or other written engagement but every other item of duty in the list just given could, I think, be enforced as a rule of political law, or, to put the same thing another way, as a part of general political usage, whether the obligation had been accepted or declared in any written instrument or not."

Professor Holdsworth: Is your view of this quite consistent with the judgment in the Hemchand case This is the passage "On the other hand there are the repeated declarations by the Court of Directors and of the Secretary of State that Kathiawar is not within the Dominions of the Crown. Those declarations were no mere expressions of opinion. They were rulings by those who were for the time being entitled to speak on behalf of the sovereign power, and rulings intended to govern the action of the authorities in India by determining the principle upon which they were to act in dealing with Kathiawar." That seems to be rather an expression of opinion from the Privy Council that rulings of the Government of India and the Secretary of State for India have some binding force

Sir Leslie Scott: Absolutely consistent with what I have said, Sir You must consider what the subject matter of the decisions there was. It was that the British Sovereign does not claim that Kathiawar was his territory We know in every Court that the decision of the Sovereign is treated as binding upon all Courts and all British Officials as to what our relationship is to any foreign states If we say that any given territory is not British the Crown says that to all its appropriate officers, in this case the Secretary of State for India That is final That is all that that decision says

Professor Holdsworth You do not think the Privy Council meant to say you must attach more weight, in their opinion, to any ruling either by the Government of India or by the Secretary of State?

Sir Leslie Scott No, certainly not In all the cases that have been up, I have not found anywhere a hint of your suggestion and it seems to me to be quite foreign to the expressed decision in the Hyderabad case There have been plenty of rulings about jurisdiction where the considered action of the Government of India was in question

Professor Holdsworth. Was it the Yusuf-ud-din case?

Sir Leslie Scott The Yusuf-ud-din case My submission is that practice or usage of itself has no binding force at all, though behind it there may be an agreement which has binding force Decisions of Government have no binding force whatever except where they are decisions given by consent In some cases the Government has given decisions in circumstances when the decision is binding on the particular State because the action of the State has made it binding, but in matters of internal affairs, in my submission, they are not binding at all Where you get into a more debatable land is where you are dealing with matters that are left, by the agreement of paramountcy or by some particular Treaty in general terms, to the Crown, and it may be that on the true interpretation of those terms a discretion is left to the Crown within certain limits Of course, where a discretion is so left, the decision is a decision by the consent of the State and that must be

understood as part of the broad proposition that unless you can trace back the authority to give the decision to some ultimate consent on the part of the States, it is not binding. My submission in this respect is one which, of course, must be applied to the subject matter with due regard to the other submissions I have made which are contained in the Opinion as to the powers that are ceded to the Crown by the agreement of paramountcy or by any Treaties. Illustrate it in another way. Take two illustrations, one comparing the Udaipur Treaty, which says that Udiapur shall be absolute Sovereign within his State, with the Mysore Treaty, which says that the Government of Mysore shall be guided by the advice of the Government of India or the Government of Madras in all matters. Take the Mysore Treaty of 1881, Article 22: "The Maharajah of Mysore shall at all times conform to such advice as the G G I C may offer him with a view to the management of his finances, the settlement and collection of his revenues, the imposition of taxes, the administration of justice, agriculture and industry, and any other objects connected with the advancement of H.H.'s interests, the happiness of his subjects, and his relations to the British Government" Obviously, by Treaty, Mysore, having no option in the matter, because it had to take the State on what terms it could get, had agreed to leave a very wide discretion of decision to the Government.

Professor Holdsworth: Still, even Udaipur acknowledged supremacy to the Crown and promised to act in subordinate co-operation.

Sir Leslie Scott. But subordinate co-operation is a pure matter of interpretation connected with military operations

Professor Holdsworth· If they had meant it to refer only to military operations, I should have thought they would have said so.

Sir Leslie Scott: I will deal with that to-morrow.

Professor Holdsworth: There is one Treaty I have met, I think it is in the case of Scindia, which is in Volume VII of Aitchison, which does limit it in those words, suggesting if the Government wanted to limit the words "subordinate co-operation" to military matters, it would have said so

Sir Leslie Scott· But all contracts have to be construed in the light of surrounding circumstances, and you know what the circumstances were in 1818 It was when the Crown, just at the end of the Pindari War and the suppression of the Peshwa, were consolidating their position from a military point of view If you want me to argue it, I will do so with pleasure.

Professor Holdsworth: I only interposed that because it seemed to me you were putting rather a restricted meaning on the particular clause in the Udaipur Treaty, which you have taken throughout as a kind of model Treaty, as expressing the Paramountcy Agreement.

Sir Leslie Scott· It does not express the whole of it It expresses most of it

Professor Holdsworth: I merely mentioned that, because you chose that example yourself.

Sir Leslie Scott: I will not argue it now, but my submission is that this phrase "subordinate co-operation" there is in relation to foreign affairs

Professor Holdsworth You said military affairs.

Chairman: You mean military affairs.

Sir Leslie Scott: It is military affairs because it is foreign affairs Udaipur as a State will co-operate with the British Government in all cases of danger, attack and so on, acting under guidance for purposes of joint action. That is what "co-operate" means—co-operate in such matters as will be matters of joint action. Do you want me to pursue that point about the meaning of the phrase "subordinate co-operation" any further?

Professor Holdsworth: No

Chairman: I do not think it is necessary.

Sir Leslie Scott: We have dealt with it in the Opinion

Professor Holdsworth: I know it is dealt with in the Opinion

Sir Leslie Scott. The real point is that it is co-operation of the State as a unit with any enterprises upon which the Government of India may decide in relation to foreign affairs

The other point I was going to make was this There are certain Treaties in which it is expressly laid down that British jurisdiction shall not be introduced. You remember that My question, as Counsel, is, how is it possible to suggest that the Government of India could get any right to introduce British jurisdiction into that State without further agreement or further consent? I venture to submit you have a test case there for saying definitely that no usage, no political practice, no decision of Government, can possibly introduce British jurisdiction into that State, unless the one event happens of gross misgovernment, entitling the Government of India not to introduce British jurisdiction, but to take over the control of the State temporarily till the danger has been removed, upon which happening the Government would be under an obligation to go out and leave the State The point is called to my attention by His Highness of Nawanagar that you get the same kind of consideration in regard to the suggestion that subordinate co-operation means the acceptance of internal control as you do in the case of the point you put to me, Professor Holdsworth, of the surrender of foreign relations entitling the Government of India to make an international Convention binding on the States internally. My submission there was that the right of the State, whether it is express or whether it is tacit, to have complete internal sovereignty, must be treated as a condition upon the exercise of the right conferred upon the Government, so that the co-operation which the Crown is entitled to demand is such co-operation as is consistent with the preservation of the absolute sovereignty of the Maharaja of Udaipur within his territories It is the same point

Professor Holdsworth For instance, in your view, could a State refuse to allow a Cantonment to be placed in a State? Supposing the Military Authorities say "We think this particular spot is a very good spot for a Cantonment" what then?

Sir Leslie Scott No That is one of the exceptions which I have already expressly conceded

Professor Holdsworth: That is an exception of internal sovereignty, if you are going to give the words their wide meaning.

Sir Leslie Scott I agree, but it seems to me that is necessarily covered within certain limits, as laid down in the Opinion, by the giving up to the Government of India or the Crown of the whole business of external defence, and putting upon the Crown the whole duty of protecting the States.

Professor Holdsworth: I should have thought, by parity of reasoning, to go back a minute, that would account for the exercise of jurisdiction in the cases of Americans, on diplomatic grounds, because the whole of the diplomatic relations are gone. Therefore, surely the reasoning which would apply to the one thing would apply to the other

Sir Leslie Scott · I should have submitted not, clearly. If there are going to be troops in India, maintained as a matter of contractual obligations to the States, in order to protect the States *amongst others, those troops have to be cantoned somewhere. If*, for genuine strategic reasons, it is necessary to have a Cantonment in a part of India which, having regard to the means of communication, health considerations and so on, make it necessary to put it into a State, then I should myself have thought it is fairly plain that the right to have a Cantonment there had been conceded by the State.

Professor Holdsworth: I quite agree.

Sir Leslie Scott: It is the same point as the strategical railway. When there were no railways at all in India and when the first main line of *railways* was built, the *strategic necessity* of communication by railway entitled the Crown to call upon the States, along the appropriate lines of route for that railway, to allow the railway to be made through the States May I recall your memory to the passage in the Opinion where we dealt with that point? It is paragraph 6 (b) We say. "The true test of the legality of any claim by the Crown, based on paramountcy, to interfere in the internal sovereignty of a State must we think be found in the answer to the following question 'Is the act, which the Crown claims to do, necessary for the purpose of exercising the rights or fulfilling the *obligations of the Crown in connection with foreign relations and* external and internal security?' If the claim be tested in this way, its legality or otherwise should be readily ascertainable These matters do not fall within the competence of any legal tribunal at present existing; but if they did, such a tribunal, when in possession of all the facts, would find no insuperable difficulty in deciding the question" Then after dealing with the right of interference for misgovernment, we say: "It would be equally out of place for us to try to particularise as to what acts of interference would be proper, in cases where some amount of interference was admittedly *justifiable, beyond saying that the extent, manner and duration of* the interference must be determined by the purpose defined in our question above" That same type of consideration applies, in my submission, to all the various points that you have been good enough to put to me for our consideration. In each one the test is: Is that act necessary for the purpose for which the State has made the cession of the powers in question?

That I think is a good stopping place for to-day. As is obvious from to-day's argument, it is only possible to deal with these complicated legal questions from certain points of view. I cannot attempt to cover the whole ground. I will deal with the other questions which you put to me to-morrow, including the proposals for the future.

Minutes of the Evidence given before the Indian States Committee at Montagu House, Whitehall, S.W.1.

Tuesday, 27th November, 1928 at 3 30 p.m.

PRESENT:

SIR HARCOURT BUTLER, G C S.I, G C I E, *Chairman*
Colonel The Honourable SIDNEY C PEEL, D.S.O.
Professor W. S HOLDSWORTH, K C
Lieutenant-Colonel G D OGILVIE, C.I E, *Secretary.*

Their Highnesses the MAHARAJA OF KASHMIR, the MAHARAJA OF PATIALA, the MAHARAO OF CUTCH and the MAHARAJA OF NAWANAGAR.

The Right Honourable Sir LESLIE SCOTT, K C, M P, appeared on behalf of the Standing Committee of the Chamber of Princes

Sir Leslie Scott. Following on the argument which I addressed to the Committee yesterday on the subject of residuary jurisdiction, and following the method which you have been good enough to permit for the sake of saving time, I propose to hand in for printing, as the first part of my address to you to-day, some further legal considerations in connection with jurisdiction which I had ready yesterday but was not able to deal with It is essentially a legal argument, and I thought it might be convenient to the lay members of the Committee, and possibly not inconvenient to the lawyer, to have some references to the cases

EXTERRITORIAL JURISDICTION

DECIDED CASES AND TEXT BOOKS

PART I GENERAL

The fundamental principle of law which I have been submitting to the Committee is nowhere better stated than in the following passage from *Sir Francis Piggott's* Treatise on Exterritoriality 1st Edition, 1892 Speaking of the Foreign Jurisdiction Act, he says —

Page 18. "The Queen's foreign jurisdiction in a governed country is not exercised by any inherent right of sovereignty which she herself possesses, nor by any inherent right in Parliament ..... to grant it to her ... It is exercised solely in virtue of the grant or permission to exercise it which the Queen has received from the Sovereign to whom the territory belongs.

The grant is in almost all cases by Treaty, and in the terms of the Treaty lies the definition of the Queen's rights Complete exterritoriality in an independent State is practically unknown. Such grants are to be found, but only in connection with a fully protected State. Exterritoriality is a question of degree. This results from the very nature of the case. The Sovereign's power does not arise in all its majesty and perfection over her subjects in Eastern lands, but only so much of it as Eastern Potentates will permit by grace or force of arms It might indeed be argued that the rights she exercises in Oriental countries are not her Sovereign rights at all, but merely the delegated rights of the actual Sovereigns of those countries It is certain that they are exercised not in virtue of mere abandonment, but in virtue of a definite assignment to her . "

Page 21: " Obedience to the law of England in such a country is required not because that law has any inherent extra territorial force, nor because of any allegiance due to the (British) Sovereign but because the Sovereign of the country has expressly placed English subjects under the jurisdiction of English law.

There is nothing in Exterritorial Treaties to prevent the application to the case, of the ordinary principle that a foreigner owes temporary allegiance to the Sovereign of the country in which he temporarily resides: owes temporary obedience to the law of that country The fact that his offences are decreed to be judged, and his disputes are allowed to be settled, by the law of his own country, does not remove him from the sphere of this temporary allegiance and obedience, except in so far as it may result from the application of the Treaty grant Indeed he owes obedience to the laws of England by virtue solely of his temporary allegiance to the foreign Sovereign It is in virtue of this alone that the laws of England have any binding and executable force over him in that country

Too much emphasis cannot therefore be placed upon these fundamental principles of exterrioriality, that it has nothing whatever to do with the sovereign rights of the British Crown nor with the so-called omnipotence of the British Parliament; that its existence depends entirely on the will of the Sovereign of the country wherein it is exercised; and as its existence depends on this, so also does its extent, and its extent is to be found expressed in no other document but the Treaty. . . .

The exact position involved in exterritoriality may be shortly stated thus: Such powers alone as are surrendered by the Sovereign of the country can be exercised by the Sovereign of the Treaty Power [i e. the Sovereign to whom the grant has been made]: all those powers which are not surrendered are retained "

The correctness of the above statement of the law is impliedly recognized in the Preambles to both the British and the Indian Foreign Jurisdiction Acts which run:—

" Whereas by treaty, capitulation, grant, usage, sufferance, and other lawful means, Her Majesty the Queen [Governor-General in Council] has jurisdiction within divers foreign countries [beyond the limits of British India] "

That the Foreign Jurisdiction Act itself recognizes that jurisdiction abroad must (in the absence of conquest or cession) rest on grant or sufferance is clear not only from the Preamble but also from Section 2 of the Act which says that —

> "Where a foreign country is not subject to any government *from whom Her Majesty the Queen might obtain jurisdiction in the manner recited by this Act*, Her Majesty shall by virtue of this Act have jurisdiction over Her Majesty's subjects for the time being resident in or resorting to that country etc."

This clearly implies that where there is a "government" jurisdiction cannot exist merely "by virtue of this Act" but must in "some way be derived from the government in question"

With regard to jurisdiction resting on usage or sufferance *Piggott* (Treatise on Exterritoriality, 1st Edition, 1892) says —

> Page 51: "The position maintained in the foregoing pages is that the whole question of exterritoriality rests on the Treaty and this both from the point of view of the Sovereign of the foreign country in which it is exercised, and also from the point of view of the persons who are subject to it
>
> If in a foreign country under ordinary conditions it is beyond the power either of the Sovereign or of Parliament to legalize the commission of any act in that country which is wrongful by the law of that country, or which requires the authority of that law, it must also be beyond the power, either of the Sovereign or of Parliament, to legalize its commission in a country where exterritorial privileges have been granted, unless it be in fact one of the privileges.
>
> In other words it is not competent either for the Sovereign or for Parliament to tack on to the powers with which the Consular Courts and officers are invested under the Treaty, other powers which do not exist in other countries, and are not to be found among the Treaty privileges The mere fact that there is an Executive and a Judiciary by which such powers may be carried out cannot render them legitimate
>
> The Foreign Jurisdiction Act however recites that this jurisdiction exists by 'Treaty, capitulation, grant, usage, sufferance, and other lawful means' The first three obviously fall under the general head of 'Treaty' the last three may conveniently be treated under the head of 'Sufferance' Practically, there are no other 'lawful means' of acquiring such a jurisdiction
>
> With regard to foreign jurisdiction resting solely on sufferance, there is little to be said So far as it is possible to trace the matter, Zanzibar is the only country in which it appears ever to have been claimed as exercisable on sufferance, and in this case a Treaty in which the matter was dealt with was afterwards concluded
>
> The important question to consider however is whether Sufferance can co-exist with Treaty as the basis of the rights *A priori* I confess that I should have doubted it at least diplomatic protest should be sufficient to break the continuity of the sufferance But as we are looking at the question from two sides, it is well to see

how matters stand with regard to the British subject in the absence of diplomatic protest on the part of the Foreign Sovereign. On this question there is the authority of *Dr. Lushington* in the case of *Papayanni v. The Russian S.N. Co.* '*The Laconia*' 2 Moo. P.C. N.S at page 181:—

> 'It is true beyond all doubt that as a matter of right no State can claim jurisdiction of any kind within the territorial limits of another independent State. It is also true that between two Christian States, all claims for jurisdiction of any kind, or exemption from jurisdiction, must be founded on Treaty or engagements of similar validity . . But though, according to the laws and usages of European nations, a cession of jurisdiction to the subjects of one State within the territory of another would require, generally at least, the sanction of a Treaty, it may by no means follow that the same strict forms, the same precision of Treaty obligations, would be required or found in intercourse with the Ottoman Ports. It is true as we have said that if you enquire as to the existence of any particular privileges conceded to one State in the dominions of another you would, amongst European nations, look to the subsisting Treaties; but this mode of incurring obligations, or of investigating what has been conceded, is a matter of custom and not of national justice. Any mode of proof by which it is shown that a privilege is conceded is, according to the principles of natural justice, sufficient for the purpose The formality of a Treaty is the best proof of the consent and allegiance of parties, but it is not the only proof, nor does it exclude other proof; and more especially in transactions with Oriental States Consent may be expressed in various ways, (1) by constant usage permitted and acquiesced in by the authorities of the State, (2) active assent; (3) or silent acquiescence, where there must be full knowledge'"

Piggott continues.—

> "Without pausing to analyze this enunciation of the law which is unfortunately somewhat vague in parts, we do find a very explicit statement of the meaning of the term sufferance: there must be 'full knowledge' and then there may be either 'active assent' or 'silent acquiescence' So that if we accept the extraordinary proposition that Treaty rights do not vary according to the terms of the Treaties, but according to the nationality or religion of the other contracting party we may possibly be compelled to admit as a corollary to this proposition that rights by sufferance can spring up after the rights by Treaty have been defined. But this is a different proposition from saying that because jurisdiction is claimed to be exercised which the Treaty does not support, therefore it is exercised by sufferance For the warrant for this must be full knowledge and without full knowledge there can be no sufferance . . . "

Piggott might have added to this last sentence that "active assent" or "silent acquiescence" are also required.

The above remarks however, assume *Dr Lushington's* statement of the law in the *Laconia* to be wholly correct. I submit not, and that

the true view is that where there is a Treaty or Grant, no privileges can legally be claimed or exercised except as provided thereby, unless there has been some subsequent unequivocal grant.

Support for this view is to be found in the case of *Imperial Japanese Government v. P. & O Co.*, 1895, A.C., 644, and *Muhummud Yusuf-ud-Din v. The Queen Empress*, 1897, 24 Indian Appeals, 137. In the first of these cases a British Consular Court in Japan was asked to entertain, by way of counterclaim, a claim by a British Defendant against a Japanese Plaintiff The Treaties between Japan and Great Britain concerning the Jurisdiction of Consular Courts, provided (in the opinion of the Privy Council) that claims by a Japanese against a British subject were to be tried in the Consular Court, but that claims by a British subject against a Japanese were to be tried in the Japanese Courts. The Privy Council held that just as a claim by a British subject against a Japanese could not be heard in the Consular Courts, so equally a counterclaim in an action properly started there by a Japanese against a British subject, could not be entertained In delivering judgment *Lord Herschell* said, page 656 —

> "It is difficult to see on what ground a British subject can insist, when sued in his own Consular Court, that the Court shall take cognisance of and adjudicate upon a claim which he makes against a Japanese It appears to their Lordships that it would be in violation of the treaty, and in excess of the jurisdiction which the sovereign power of Japan, in derogation of its sovereign rights, has granted to the British Consular Court, if it were to yield to such a contention . . .
>
> Such a proceeding would in their Lordships opinion be clearly inconsistent with treaty rights ."
>
> Page 657. "A British subject cannot claim the advantage of being amenable exclusively to his own Consular Court and at the same time object to the limited jurisdiction which alone it possesses . "
>
> Page 658 "Their Lordships have dwelt at length upon the effect of the treaty provisions because they regard these as determining the question in controversy between the parties
>
> Their Lordships do not find it necessary to express any opinion upon the arguments addressed to them in relation to the construction of the Orders in Council It is clear that these could not operate to confer a jurisdiction upon the British Courts in Japan wider than was acquired by treaty "

The last observation is directly in point in the present case It is true that *Lord Herschell* adds —

> "If indeed an Order in Council in terms prescribed something which was inconsistent with the treaty, it may be that the consular judge would be bound to conform himself accordingly and that the party aggrieved would have to seek redress through the diplomatic intervention of his Government "

Plainly *Lord Herschell* means that as between himself and his own home Government the consular officer might have to obey the Order in Council, but that as between the two Governments concerned the Order

in Council would be invalid On page 659 *Lord Herschell* adds further.—

"It will be observed that it (the Order in Council) only purports to prescribe how the jurisdiction exercisable is to be exercised What jurisdiction the Court possesses must be determined *ab extra*"

It should be mentioned that in this case it was suggested that the Japanese, by suing a British subject in the Consular Court, had submitted to its jurisdiction, so that a counterclaim could be entertained against him The Privy Council rejected this view on the ground that the provisions of the Treaty must not be exceeded, thus negativing the idea that where there is a treaty there can be any other source of extraterritorial jurisdiction.

In *Muhammed Yusuf-ud-Din v. The Queen Empress* before the Privy Council, the facts and judgment were as follows (quoting the head note) —

"The Nizam of Hyderabad having granted to the British Government a 'civil and criminal jurisdiction along the line of railway' *within his dominions 'as is the case on other lines running* through independent states' a native of the Nizam's State was arrested at a station on the said railway by warrant granted by a magistrate at Simla in respect of an offence committed in British territory —

Held, that the arrest was illegal. The jurisdiction granted does not relate to offences not committed on the railway, nor in any way connected with its administration.

Held further that in the absence of cession of territory by the Nizam a notification by the Governor-General in Council was inoperative to give jurisdiction, or as the source of authority in excess of that granted by the Nizam"

In giving judgment *Lord Halsbury* said at page 145:—

" their Lordships are of the opinion that the railway territory has never become part of British India, and is still part of the Dominions of the Nizam. The authority therefore to execute any criminal process must be derived in some way or another from the Sovereign of that territory, and the only authority relied on here is the authority given in the correspondence which constitutes the cession by the Nizam of jurisdiction to the British Government It is important to observe that the notification upon which the learned judges in India appear to have relied would itself give no such authority. Even if in more extensive terms than in fact are included in the notification, it had purported to give jurisdiction,—as the stream can rise no higher than its source, that notification can only give authority to the extent to which the Sovereign of the territory (the Nizam) has permitted the British Government to make that notification . . the notification is not the source of authority. The authority, of which this is only the notification, is derived from the Sovereign power of the Nizam himself It becomes therefore necessary, as there is no express treaty, and no words which in themselves precisely define the amount of jurisdiction intended to be conveyed by the Nizam, to revert to the correspondence which passed between

those representing the two Governments—to see in the first place what was asked for, and what was ultimately conceded "

Lord Halsbury then discusses the exact powers conferred, and concludes:—

" If that is the only jurisdiction which is given and there is no evidence of any other jurisdiction whatsoever given by the Treaty, usage, or otherwise, it is manifest that the jurisdiction conferred is a criminal and civil jurisdiction 'along the line of railway, as is the case on other lines running through independent States' "

In this last remark *Lord Halsbury* no doubt seems to assume the possible correctness of *Dr. Lushington's* view in *The Laconia* quoted above, that even where there is a grant, privileges not contained in the grant may exist by usage. But such a view is inconsistent with *Lord Halsbury's* earlier language and with the decision in *Japanese Government v. P. & O.*, and on the principles previously stated no usage can be material which does not amount to an actual consent by the territorial Sovereign And as *Piggott* remarks " at least diplomatic protest should be sufficient to break the continuity " of any course of usage or sufferance

The truth is that usage and sufferance alike can have little operation in a country with a recognised Government capable of making a cession if and when it chooses by Treaty or other written instrument And the fact that the Government of India made it a practice to ask for written cessions of jurisdiction from all the more important States is conclusive that it realised the necessity of obtaining an express consent and was not really relying on the vague sanction of usage—with its inherent difficulty of proving any agreement behind it, without which the usage could have no effect in law

The following quotations from publicists are relevant —

Hall, Foreign Powers and Jurisdiction of the British Crown 1894

Page 2 " While therefore any State can affix such value as it chooses to acts done by its subjects abroad, the effects of acts so done are not necessarily felt except within its own territory, if like effects follow in another country they are produced through permission in some shape or form having been given by the local Sovereign He may allow foreign subjects to do certain acts in accordance with their own laws and he may respect the incapacities which are imposed on them; he may concede more or less of jurisdictional power to the foreign State, but whatever he does is done of pure grace No country can insist as against another that acts performed in a manner demanded by itself shall be recognised in the country where they are accomplished, still less can it there exercise jurisdiction over the persons of its subjects without the express or implied consent of the territorial Sovereign "

Page 135 " Superficially when a British Consul tries an English prisoner or adjudicates in a case between two British subjects, he is merely the agent of a State to which the territorial Sovereign has granted authority to enforce duties that are owed by its subjects In fact he protects those subjects from the operation of unfit or unequal laws

Essential as the protective element is seen to be on analyzing the facts, it is not of course to be denied that the jurisdiction exercised by a British Consul is in something besides its formal aspect a delegation from the local Sovereign. It is subjected to the incidents of delegation, that is to say if there be doubt whether certain powers have or have not been conferred by the territorial Sovereign, the doubt must be solved in his favour."

Lewis, Foreign Jurisdiction.

Page 1. "The essence of political sovereignty is that it is legally omnipotent within its own territory, but that it is legally powerless within the territory of another state."

Sir Herbert Jenkyns, British Rule and Jurisdiction Beyond the Seas 1902

Page 153. "In considering the Orders in Council issued under the Foreign Jurisdiction Acts it must be recollected that in any legal proceeding, civil or criminal, the validity of any Order can be challenged on the ground that it is *ultra vires*, as for instance that it dealt with jurisdiction which the Crown did not possess, or purported to confer powers in excess of the jurisdiction possessed by the Crown."

Page 154 "The Act (The Foreign Jurisdiction Act) does not confer territorial or indeed any jurisdiction on the Crown but facilitates the exercise by the Crown and its officers of the jurisdiction acquired *ab extra*. The extent of the jurisdiction therefore depends on the treaty or usage, and not upon the Act Also the Act does not expressly apply to cases where jurisdiction is acquired by conquest or where sovereignty is acquired by cession, and it may be doubted whether the words 'or other lawful means' can be held to apply in either of these cases"

Tarring: British Consular Jurisdiction in the East 1887.

Page 13 "The right of British Consular Officers to exercise any jurisdiction in countries beyond Her Majesty's dominions in matters which in other countries come exclusively under the control of the local magistrate depends in the first place on the extent to which that right has been conceded by the rulers of those countries to the British Crown The right depends in the second place, on the extent to which the Queen, in the exercise of the powers vested in Her Majesty by Act of Parliament, may be pleased to grant to any of her Consular servants authority to exercise jurisdiction over British subjects, and the Orders in Council from time to time issued under such Acts of Parliament are the warrants for the proceedings of the Consuls and exhibit the rules to which they must adhere"

The above quotations and observations enable me to summarise as follows: Parliament (or the Government of India) can make any laws it pleases, but how far those laws have any effect in any foreign country is entirely a matter for that country to decide. To take a familiar example, the Foreign Marriage Act validates certain marriages made between British subjects abroad. Any marriage celebrated in accordance with its provisions is (at any rate so far as form goes) valid in

English law and must be recognised as such by any English Court. But how far such a marriage is valid in the country it was celebrated in, or in any other country, depends entirely on how far that foreign country is prepared to give effect to the provisions of our Foreign Marriage Act. In exactly the same way the Foreign Jurisdiction Act, however valid and effective as between persons all of them owing allegiance to the British Crown, can only take effect abroad (*a*) if permitted to do so by the foreign Sovereign and (*b*) to the extent and no further which the foreign Sovereign expressly or impliedly permits

Legally therefore the only methods by which the Crown can exercise jurisdiction in any given piece of territory is either the possession of complete sovereignty over it, or grant from the Sovereign, express or implied.

Exactly the same principles apply to legislation or to executive acts Either these are performed by virtue of the possession of complete sovereignty, or else because powers of legislating or of performing executive acts have been expressly or impliedly granted, in which case the grantee cannot go beyond the grant however great the powers granted may be.

Confusion of thought is often evidenced by judges and writers in the statement that certain powers are exercised by the Crown in virtue of its prerogative As between the Crown and its own subjects this may be so But as between the Crown and some foreign Ruler, it can only be so if the Crown has received, or assumed, complete sovereignty over the territory in question In all other cases the Crown can exercise delegated powers in foreign territories by grant only. In such a case no question of prerogative can arise, the power is exercised by virtue of grant alone

To the above remarks there is one proviso It is from a practical point of view a necessary concomitant of a grant of civil or criminal jurisdiction, that the municipal law, civil and/or criminal, of the grantee shall be applied to the determination of causes falling within the grant What powers are so transferred is really a question of the interpretation of the terms of the grant of jurisdiction But it is plain that the object of the grant (or a great part of it) would otherwise often be defeated For instance, it would be of little use for Englishmen in China to be tried in Consular Courts unless they can be tried by English, or at any rate, not by Chinese law In so far therefore as is necessary to make its law (and any recent extensions of it) applicable in its courts exercising foreign jurisdiction, the grantee power may pass legislation which will have effect in foreign territory. But beyond this it may not legislate, or do executive acts, unless, as before stated, it is expressly empowered by its grant so to do, or exercises full sovereignty over the territory in question, and then no exterritorial questions arise

Is there any reason why all of the above principles should not apply in their entirety to an Indian State in its relations with the Government of India? I can see none except on the supposition that there exists in the Crown some mysterious residue of prerogative power which entitles it to assume jurisdictional, legislative, or executive powers in Indian States beyond those which it has received by grant, express or implied But the truth is that the Crown has no sovereign rights at

all over an Indian State except such rights as have been surrendered to it, expressly or tacitly, by that State.

I ought to mention the three cases of *Rex v. Earl of Crewe* 1910, 2 K B , 576, In *re Southern Rhodesia* 1919, A.C. 211; and *Sobhuza II v. Miller*, 1926, A.C. 518, which might at first sight be thought to afford authority for the proposition that the exercise of foreign jurisdiction may be valid by reason of (*a*) an Order in Council under the Foreign Jurisdiction Act, even though it does not exist in virtue of treaty, grant, capitulation, usage or sufferance, or else (*b*) of the assumption of jurisdiction having been made simply as an "Act of State." As to these propositions.—

(1) There are no "lawful means" other than those enumerated in the preamble to the Foreign Jurisdiction Act. The only other means is force, with which we are not concerned, because such taking of jurisdiction would be a violation of the Royal pronouncements.

(2) If the exercise of the Prerogative is a sufficient basis for the exercise of powers in a foreign country it can only be so by virtue of some degree of sovereignty exercised over that country The sovereignty may be complete, or else it may be partial, in which latter case one comes back to the question of grant

In the three cases mentioned, there can be no doubt that the territories in question, Bechuanaland, Rhodesia, and Swaziland, were in a position tantamount to being under the complete sovereignty of the Crown—in effect annexed to the Crown The Foreign Jurisdiction Act had been used as mere machinery for legislation in virtue of the prerogative—the correct constitutional method in such conditions as prevailed in those countries. But there is no justification for reading those cases as saying that powers can be exercised by the Crown without any grant in a country possessing any real degree of sovereign independence Still less can they be authority for saying that the Crown can assume so to do when the relations between the Crown and the State in question are already regulated by a subsisting treaty or other agreement—and the State possesses an ordered government. I append extracts which make the bearing of the cases clear

EXTRACT from the Judgment of LORD HALDANE in *Sobhuza II v. Miller* 1926 A.C., at page 521

"In the opinion of the Court below, the Order in Council of November 2, 1907, was validly made Even if Swaziland was no more than a protectorate, it was one which approximated in constitutional status to a Crown Colony, and the Crown had power to make laws for the peace, order and good government of Swaziland, and of all persons therein Any original native title had, therefore, been effectually extinguished. The question which their Lordships have to consider is whether this conclusion was right in point of law. Into any topic of policy they are, of course, precluded from entering In order to *come to a conclusion on the legal question it is necessary to look at* the history and circumstances in which it has arisen. Swaziland lies on the east of the Transvaal, between that country and the coast It was treated as an independent native State both by the South African Republic and by the British Government, notwithstanding a good deal of interference by both in its affairs, and it was recognized, and still

is recognized, as a protectorate. But the South African Republic appears, from the terms of the Convention made in 1894, to have become preponderant in the internal control. The relationship seems to have been recognized as being one in which Swaziland stood to the Republic as a protected dependency administered by the South African Republic. This protectorate stopped short of incorporation, but apparently it was recognized by the Convention of 1894 between Great Britain and the South African Republic (art. 2) as giving the latter, without incorporation, all rights of protection, legislation, jurisdiction and administration over Swaziland, and the inhabitants thereof The natives were, however, guaranteed in their laws and customs, so far as not inconsistent with laws made pursuant to the Convention, and in their grazing and agricultural rights, with the proviso that no law thereafter made in Swaziland was to be in conflict with the guarantees given to the Swazi people in the Convention. The question which at once presents itself is, what is the meaning of a protectorate? In the general case of a British Protectorate, although the protected country is not a British dominion, its foreign relations are *under the exclusive control of the Crown, so that its Government* cannot hold direct communication with any other foreign power, nor a foreign power with its Government This is the substance of the definition given by Sir Henry Jenkyns at page 165 of his book on British Rule and Jurisdiction beyond the Seas Their Lordships think that it is accurate, and that it carries with it certain consequences. The protected State becomes only semi-sovereign, for the protector may have to interfere, at least to a limited extent, with its administration in order to fulfil the obligations which international law imposes on him to protect within it the subjects of foreign powers A restricted form of extra territorial sovereignty may have its exercise called for, really involving division of sovereignty in the hands of protector and protected But beyond this, it may happen that the protecting power thinks itself called on to interfere to an extent which may render it difficult to draw the line between a protectorate and a possession In South Africa the extension of British jurisdiction by Order in Council has at times been carried very far Such extension may be referred to an exercise of power by an act of State unchallengeable in any British Court, or it may be attributed to statutory powers given by the Foreign Jurisdiction Act, 1890 This statute provided, upon the preamble, that by treaty, capitulation, grant, usage, sufferance, and other lawful means, the Crown has power and jurisdiction in divers countries and places outside its dominions, and that it was expedient that Acts relating to the exercise of such jurisdiction should be consolidated, that it should be lawful for the Sovereign to hold, exercise and enjoy any jurisdiction now or hereafter possessed within a foreign country in the same and as ample a manner as if the jurisdiction had been acquired by cession or conquest of territory, and that every act and thing done in pursuance of any such jurisdiction was to be as valid as if it had been done according to the local law then in force in that country It was provided that any Order in Council made in pursuance of the Act should be laid before both Houses of Parliament within a limited time and should have effect as if enacted in the Act The Foreign Jurisdiction Act thus appears to make the jurisdiction, acquired by the Crown in a

protected country, indistinguishable in legal effect from what might be acquired by conquest. It is a statute that appears to be concerned with definitions and secondary consequences rather than with new principles This view of it was also that taken in an important judgment of the Court of Appeal. *Rex* v *Earl of Crewe* (1910) 2 K B., 576 There, by an Order in Council, the High Commissioner for South Africa had been authorised to provide in the Bechuanaland Protectorate for the administration of justice and for the peace, order and good government of all persons within that protectorate and the prohibition and punishment of all acts tending to disturb the public peace Sekgome, the chief of a native tribe, was detained in custody under a proclamation purporting to have been made by the High Commissioner under the powers so conferred He applied for a *habeas corpus* against the Secretary of State for the Colonies It was held that the protectorate was a foreign country within the meaning of the Foreign Jurisdiction Act, and that the proclamation was validly made It was further held that the detention was lawful, inasmuch as the construction of the Act settled by practice rendered it impossible to limit its application to British subjects in the foreign country. Vaughan Williams, L J., considered that the proclamation under which the detention took place was valid as a law which the Act gave the Crown absolute power to make and apply, just as if the territory had been obtained by cession or conquest. He also held that the detention could be independently justified as an act of State Kennedy, L J , concurred, definitely on the view that the detention could be justified as an act of State, as well as under the Foreign Jurisdiction Act The stress in the judgment of Farwell, L J., who arrived at the same conclusion as to the validity of the proclamation under which the detention was made, was laid on the construction of that Act, which he interpreted in a similarly wide sense In the *Southern Rhodesia* case (1919) A C, 211, Lord Sumner, in an elaborate judgment given on behalf of the Judicial Committee on a special reference, expressed views which are substantially similar. He held that a manifestation by Orders in Council of the intention of the Crown to exercise full dominion over lands which are unallotted is sufficient for the establishment of complete power. Both of these cases imply that what is done may be unchallengeable on the footing that the Order in Council, or the proclamation made under it, is an act of State. This method of peacefully extending British dominion may well be as little generally understood as it is, where it can operate, in law unquestionable."

PART II.—SOLDIERS WHEN IN A FOREIGN COUNTRY.

Oppenheim. 2nd Ed (3rd not available at time of writing).

Page 500, § 443 ·—" Armed forces are organs of the State which maintains them, because such forces are created, for the purpose of maintaining the independence, authority and safety of the State And in this respect it matters not whether armed forces are at home or abroad, for they are organs of their home State even when on foreign territory, provided only they are there in the service of their State and not for their own purposes. For if

a body of armed soldiers enters foreign territory without orders from, or without being otherwise in the service of its State, but on its own account, be it for pleasure of for the purpose of committing acts of violence, it is no longer an organ of its State."

§ 444:—"Besides war, there are several occasions for armed forces to be on foreign territory in the service of their home State. Thus a State may have a right to keep troops in a foreign fortress or to send troops through foreign territory——."

Page 501, § 445.—"Whenever armed forces are on foreign territory in the service of their home State they are considered ex-territorial and remain therefore under the jurisdiction of the latter A crime committed on foreign territory by a member of the force cannot be punished by the local civil or military authorities, but only by the commanding officer of the force, or by other authorities of the home State* This is, however, valid only in case the crime is committed either within the place where the force is stationed or anywhere else where the criminal was on duty If for example soldiers belonging to a foreign garrison of a fortress leave the rayon of the latter, not on duty but for recreation and pleasure, and there and then commit a crime, the local authorities are competent to punish them."

This last sentence is in accordance with the views of *Fiore* (§ § 513-14) where he says that within the lines of the army the jurisdiction of the country reigns to which the army belongs, but that any members of the force found outside its lines may be subjected to the local jurisdiction.

Most writers only really deal with the case of troops in transit through foreign territory As to this *Westlake*, 2nd Ed, page 265, says.—

"Standing then on the ground of usage and reason, the case which may occur on land is one on which no doubt has been felt, and it may be disposed of in the words of Wheaton —'The grant of a free passage implies a waiver of all jurisdiction over the troops during their passage, and permits the foreign general to use that discipline and to inflict those punishments which the government of his army may require'"

Some writers, however, take a different view from the above *Lampredi*, for instance, according to *Hall* (page 238) —

"asserts it to be the admitted doctrine that an army in foreign territory is subject to the local jurisdiction in all matters unconnected with military command"

Lampredi's own words are —

"It is the received doctrine that a foreign army also, which is passing over or remaining in the territory of some other State, is subjected to the local jurisdiction, except in the matter of military discipline which remains vested in its entirety in the commander of the army by tacit consent of the (territorial) sovereign himself, who, having conceded the right of passage or of remaining

* Footnote to *Oppenheim* "This is nowadays the opinion of the vast majority of writers on International Law There are however still a few dissenting authorities such as *Bar* and *Rivier*" [Passage from *Bar* is quoted later]

in the territory, must be taken to have intended to concede with it jurisdiction in matters military without which the army could not continue to exist—in accordance with the established principle of law that whoever grants a right, grants with it all those things which are necessary for the exercise of the right."

Von Bar (Das Internationale Privat und Strafsrecht) says:

§ 145.—"Crimes and wrongs committed by foreign soldiers against their fellows or superiors, or contrary to military regulations or the law of their own State, are primarily matters of internal discipline, and fall to be determined solely by the law and the Courts of the State to which the troops belong; since disciplinary authority must be permitted to exist in an army whose entry into the State is allowed But as regards crimes which endanger the public peace or persons not belonging to the foreign army, the authority of the State at whose invitation the troops are there, cannot be regarded as being shut out. failing any specific agreement therefore, jurisdiction vests in the court before whom the matter first comes"

From the above passages, the following principles may be deduced:—

Any immunity from local jurisdiction which may attach to troops in a foreign country, does not flow from any *specific grant* of immunity by the local sovereign. It has its source in one or other or both of the two following reasons:—

(i) Troops abroad are organs of their own State and in that character entitled to certain immunities, in the same way that diplomatic agents are privileged as such. True the foreign *Sovereign may in fact refuse to allow the immunities to* be exercised just as he might refuse to recognise the privilege of an ambassador, but if he does so he violates the principles of International Law

(ii) In addition to the above when troops find themselves abroad either passing through or stationed in a foreign country by permission of the local Sovereign, that permission carries with it, without any further specific grant, the right to certain immunities.

The result of principle (a) is that "troops" (N.B, Not individual soldiers attached to no unit within the territory) abroad are in a fundamentally different position from ordinary citizens abroad The latter are wholly amenable to the local jurisdiction except so far (if at all) the local Sovereign has conceded jurisdiction over them to their own home courts (extra-territorial or otherwise) Troops, however, by virtue of their character, and by virtue of the permission extended to them to be on foreign soil are, without any specific grant, entitled to certain immunities from local jurisdiction. The question is what exactly are those immunities?

This question cannot apparently be answered with precision. The general principle is asserted to be that there is entire immunity from the local jurisdiction both civil and criminal. The assertion of this principle must, however, be qualified as follows:—

(i) Most of the writers who make it only deal with, or apparently contemplate, the case of troops *in transit* through

foreign territory, when entire immunity from local jurisdiction may be justified on the ground of its great convenience, its temporary duration involving no serious derogation from local sovereignty, and because a permission to troops to cross certain territory may readily and easily be taken to imply a grant of immunity.

(ii) All writers probably admit that when troops or bodies of soldiers are on foreign soil for their own purposes and not by order of, or in the service of, their country, no sort of privilege attaches, just as none attaches to an envoy unless accredited by his Sovereign to the local Sovereign and no other.

(iii) Some writers, and particularly those who deal with troops stationed on foreign soil and not merely in transit, admit cases when the local authorities have got jurisdiction.

(a) Some writers such as *Oppenheim* and *Fiore* think that this question depends on the exact locality where the offence takes place Thus if it takes place outside the garrison precincts (unless the offender be on duty in some spot outside) jurisdiction is with the local authorities, and this (apparently) whether the act is committed against a fellow soldier or officer, or against a citizen of the country Similarly acts done within the locality occupied, or on duty, fall to the military or home authorities, again (apparently) whoever the victim may be

(b) With other writers it is not the locality of the act that determines jurisdiction, but its nature According to *Lampredi* anything connected with military discipline or regulations belongs to the military authorities, anything else to the local authorities *Von Bar* thinks that acts committed against other members of the army or the garrison, or which violate the regulations, or are committed against the home State, fall to the home authorities, while acts committed against citizens, or which are breaches of the peace, fall to the local authorities

It is evident that the question is in a very indeterminate state While therefore the general principle must be conceded, that immunity more or less extensive from local jurisdiction does exist, and that it exists as of right and without any specific grant, yet it would seem that any country is entitled to insist that beyond the exercise by the home or military authorities of jurisdiction as to military offences, or possibly any offences of any kind occurring within the fort, garrison, cantonments, army lines, etc , there shall be no further derogation from the local jurisdiction except by virtue of some specific arrangement, while there is no shred of authority or justification for any claim on the part of the occupying State wholly to oust the local law in any given area (such as a cantonment), to introduce its own laws in their entirety and to exercise complete jurisdiction over all persons and things military and civil within the area.

The whole of the foregoing remarks apply to armies, and bodies of troops, etc , passing through or stationed in foreign territory How far do they apply to individual soldiers? They certainly apply if the soldier is attached to any unit which is itself within the territory

What is the position, however, if the soldier's unit is not within the territory? If he is on leave, there is admittedly no question, because in that case he is not present in the foreign State in the service of his own home State. If however he is not on leave, but is either (a) passing through on his way to rejoin his unit or on some duty elsewhere, or (b) is on duty within the State in question on behalf of his own State, though attached to no unit there, *i.e.*, on individual duty, what then is the position? The case is not dealt with by publicists, and I have not been able to find any case decided in an English Court on this topic.

My suggestion is that no immunity can attach to an individual soldier as such, and apart from his unit, for the following reason The extra-territorial character of the armed forces of a State in foreign territory applies to the forces as such, to the force collectively, not to the members individually. If the members have any immunity it is in their capacity as members of the force or unit, not in their individual capacity as soldiers. Soldiers are not "organs" of the State to which they belong (see passage from *Oppenheim* Page 647), that character can only belong to armies, units, garrisons, etc, as such Even if a soldier be actually on individual duty in a foreign State on behalf of his own State, he is still not an organ of the State, and is not privileged any more than a Consul (who may also be regarded as on duty or in the service of his own country) is privileged Any privilege which may attach to a Consul exists by virtue of Treaty or arrangement alone, between the sending and receiving States, and not by anything inherent in the consular character. Such privilege only attaches to individuals when these are sovereign Rulers, or have diplomatic character, or are members of a diplomatic suite, etc

Soldiers therefore, unless attached to a unit in foreign territory, rank with any private citizen of their own home State who should find himself on foreign soil, and are amenable to the local jurisdiction to precisely the same extent

PART III.—EFFECT OF SECTION 188 OF THE INDIAN CODE OF CRIMINAL PROCEDURE.

A State has, in general, jurisdiction over all persons and things within its territory (see Judgment in the *Lotus* case, Recueil of the decisions of the Permanent Court of International Justice, Series A, No. 10). This is known as territorial supremacy

But in International Law a State has, in addition, a personal supremacy over its subjects at home and abroad. This personal supremacy enables a State to assume jurisdiction over its subjects when abroad Nevertheless such jurisdiction though it may exist cannot in general be exercised until the subject comes back within his own country. Thus any person abroad is, generally speaking, subject to two concurrent jurisdictions, one of the State where he finds himself (which can be exercised immediately), the other of his own State (which cannot be exercised till he returns home).

A State therefore is entitled, generally speaking, to legislate concerning the conduct of its subjects abroad But such legislation cannot

be carried into effect until the subject returns home Such legislation cannot have any operation or effect *ipso jure* outside the boundaries of the enacting State, or within those of any other State. If such legislation does have any directly extra-territorial effect it can only be by virtue of some pre-existing grant from the foreign State concerned, in which case the legislation becomes mere machinery whereby provision is made for the exercise of the rights granted But the legislation cannot itself be the source of such rights It can only be the source of rights to be exercised within the territory of the enacting State.

All such Acts as the Indian Code of Criminal Procedure, the Foreign Jurisdiction, Extradition Acts, etc., in so far as they operate in foreign territory are mere enabling Acts The same may, in a sense, be said of the Foreign Marriage Act Its operation abroad depends not on the Act, but on Foreign Law.

The above principles show that the Government of India is wrong —

(a) In treating § 188 of the Code of Criminal Procedure as conferring any rights of jurisdiction on any but British Indian Courts Any rights of jurisdiction residing in British Courts in an Indian State must proceed from a grant by that State, in which case § 188, or some other enactment, notification, or Order in Council, may provide the necessary machinery.

(b) In treating § 188 as excluding the State jurisdiction Such jurisdiction cannot be excluded by the mere conferring of jurisdiction on British Indian Courts Such jurisdiction can only be excluded by a specific arrangement to that effect In the absence of any such arrangement the State Courts have a jurisdiction concurrent with that of British Indian Courts

I have said that States, by virtue of their personal supremacy over their subjects, may legislate for these abroad, and assume jurisdiction in respect of acts committed by them abroad This is indubitably so as a general proposition The ordinary criminal law of England presents instances of it Nevertheless it may, in a given case, be wrong for a State to exercise this right, or rather the State may, in a given case, have deprived itself of, or limited, this right This will be so where it has entered into a Treaty excluding the exercise of its normal personal jurisdiction in certain cases Should it assume jurisdiction in such a case it would be violating its treaty obligations.

A Treaty merely conferring jurisdiction on State " A " over subjects of State " B " who are within State " A " does not necessarily exclude the jurisdiction of State " B " since the two jurisdictions may exist concurrently But as they would exist concurrently, apart from any treaty, such an agreement of conferring of jurisdiction must be taken as impliedly excluding the jurisdiction of the home Courts

But whether the exclusion be express or implied, there can be no doubt that if in spite of it the home State none the less purports to exercise the excluded jurisdiction it violates its treaty obligations and does something which as between it and the other State, is illegal

If there is an Extradition Treaty whereby the Government of India is bound to surrender an offender to the authorities of an Indian State,

and the Government of India has none the less itself assumed jurisdiction over such offender by passing legislation conferring jurisdiction on British Indian Courts, then the Government of India has violated its Treaty obligations because such legislation and the assumption of such jurisdiction is necessarily a bar to extradition

If there is no extradition Treaty or the offence is not included in the Treaty, there can be no obligation on the part of an Indian State to extradite such offenders as would come under § 188 (i) and (ii) for it is a settled principle of International Law that no country (in the absence of Treaty) can be required to extradite its own subjects While *as to all parts of § 188 the general principle applies that there is no* legal duty in International Law to extradite apart from Treaty. Thus *Oppenheim* 2nd Ed Vol 1, page 404,

§ 327 —"There is therefore no universal rule of customary International Law in existence which commands extradition."

And in a footnote —

"*Clarke* (Extradition, 3rd Edn, pages 1-15) tries to prove that a duty to extradite criminals does exist, but the result of all his labour is that he finds that the refusal of extradition is a serious violation of the moral obligations which exist between civilised States"

And see *Wheaton* 5th Edn, Page 189

The third case provided for by § 188 of the Indian Code of Criminal *Procedure, namely that of a servant of the Crown (whether a British* subject or not) who commits an offence on foreign territory, is sufficiently dealt with in the *Lotus* Judgment, of which a copy has been put in. It involves the question not merely of how far a State may legislate for, or exercise jurisdiction over, its own subjects abroad, but how far it may do these things, in respect of foreigners abroad, i.e., what right it has over persons who are neither under its territorial nor under its personal supremacy It is submitted there is no such right

I will now quote authority for the principles hitherto enunciated:—

Oppenheim, 3rd Ed., Vol 1, Page 238:

§ 145 —"The law of Nations does not prevent a State from exercising jurisdiction over its subjects travelling or residing abroad, since they remain under its personal supremacy. As every State can also exercise jurisdiction over aliens within its boundaries, such aliens are often under two concurrent jurisdictions. And, since a State is not obliged to exercise jurisdiction for all matters over aliens on its territory and since the home State is not obliged to exercise jurisdiction over its subjects abroad, it may and does happen that aliens are actually for some matters under no State's jurisdiction"

Westlake, 2nd Ed, Vol. 1, Page 214:—

"When the nationals of one State are in the territory of another, whether resident there or for a transient purpose, the authority of the former over them can still be exercised, not by action on the foreign soil, for any such action would be a usurpation of the territorial sovereignty over that soil, but by enacting penalties to be enforced on the return of the *culprits to its own territory*, or fines to be levied from property which they may have there"

Fauchille (Traité de Droit International Public, 1922 T.I, partie I[e] Page 880):—

"Incontestablement le national résidant à l'étranger continue à devoir obéissance aux lois qui, dans son pays, eussent été pour lui obligatoires. Mais ces lois ne peuvent avoir force coercitive au delà des frontières de l'Etat, et le souverain ne peut user de son '*jus imperii*' sur le territoire d'un Etat étranger."

Hall, 8th Ed., Page 56

"The authority possessed by a State community over its members being the result of the personal relation existing between it and the individuals of which it is formed, its laws travel with them wherever they go, both in places within and without the jurisdiction of other powers. A State cannot enforce its laws within the territory of another State, but its subjects remain under an obligation not to disregard them, their social relations for all purposes, as within its territory, are determined by them, and it preserves the power of compelling observance by punishment if a person who has broken them returns within its jurisdiction. Thus the subjects of a State are not freed by absence from their allegiance, the fact of their legitimacy or illegitimacy if they are born abroad, the date at which they attain majority, the conditions of marriage and divorce, are determined by the State so far as their effects within its own dominions are concerned, if they commit crimes they can be arraigned before the tribunals of their country, notwithstanding that they may have been already punished elsewhere."

The question of residuary jurisdiction is indirectly affected by the alleged prerogative powers which are said by the Government of India to be resident in the Crown, and it is useful therefore to say a word or two upon that. It is claimed that there is a residue of prerogative power in the Crown vis-a-vis the States. If, Sirs, such a residue exists, it must arise from some legal source, or result as a fact from extra-legal circumstances. By that I mean it must exist as part of some legal relationship between the parties, or it must exist outside such legal relationship and because there is no legal relationship.

In my submission it could only exist in law if by agreement with the States, express or tacit, such a residue was declared to exist in the Crown. This would have to be proved by the Crown, as the party claiming the power. There is no such provision, express or implied, in any agreement with any Indian State. If, therefore, such prerogative powers exist, they are in the case of the Indian States extra-legal; they have an existence in fact, there is no legal basis or justification for them. All you can say is that the Crown in fact exercises them. In claiming or exercising residuary prerogative powers, therefore, the Crown must either (a) postulate that in the ultimate analysis its relationships with the States are political and not legal or (b) show that such powers are exercisable in virtue of some agreement, express or tacit, or (c) admit frankly that it is doing something illegal.

Professor Holdsworth: I am only asking this for information. I do not want to express an opinion. The fact that I ask a question does not mean that I disagree with the argument. Would not it be possible to contend that the fact that the Crown has in fact exercised these powers does create by usage a right in the Crown to exercise them?

Sir Leslie Scott: My submission is "No"—very respectfully but very firmly "No" *Will you call me back to that?* I would just like you to have the sequence of argument here, and the moment I have finished this little piece of argument, may I revert to it?

Professor Holdsworth: Yes.

Sir Leslie Scott: As to (a), that is to say, that the relations are political and not legal in the ultimate analysis, the Crown cannot say this, in my submission, because it has entered into agreements with all the States individually at some time or another. Hence a legal and not political relationship has been established as a fact. This has been recognised from time to time by Royal proclamations The question is: Is it a part of this legal relationship that the Crown should have a residue of arbitrary power in all matters at its discretion? This depends it seems to me, on the answer to question (b), namely: can they show that such powers are exercisable in virtue of some agreement, express or tacit? As to that, it is a matter of ascertaining the content of the agreement of paramountcy and of construing the various written treaties and other agreements. If this be done, it will be found, in my submission, that no such residue of powers is provided for or can be implied We know the contents of the agreement of paramountcy if the Opinion is right—if it is, and I submit it is, no one can say that there is any residuum or prerogative power conferred by that, if "prerogative" be a correct epithet to apply to a power conferred by agreement, which is a matter of doubt.

If there does exist in the Crown residuary discretionary powers, they must be unlimited, because if limited there would be no discretion in the real sense of the word. Moreover, the limitation would have to exist by agreement, and we should thus come back to the position that the whole situation is governed by agreement, and by this agreement only But if the residuary discretion of the Crown is unlimited, there must be a free discretion to break or depart from existing treaties and agreements On that one may say:—

(*a*) That it would mean that such agreements were not agreements at all but mere declarations of policy, as both Sir William Lee-Warner and still more Sir Lewis Tupper allege;

(*b*) The Government and the Crown have, in the first place, declared such agreements to be binding and inviolate, and secondly, acted as if they were by, in fact, asking permission of the States before doing many of the things they wanted to do; whereas if there were truly a discretion, this would not be necessary.

The result appears to be that the mere existence of an agreement, which purports to be, is declared to be, and is treated as being, binding and inviolate, precludes the idea of a residue of discretionary power and is inconsistent with it. The two cannot co-exist. Hence the only discretionary power which can exist in the Crown is expressly or impliedly conferred upon it by the agreements. And I should like to add that I should be the last to contend that the agreements, truly construed, including the paramountcy agreement, do not leave a considerable margin of discretion to the Crown in many matters.

Now I will come to the question you were good enough to put to me Ever since I began my investigation of the problems presented by the relationship between the States and the Crown I have been very much impressed with this, that it would have been very easy and, to many nations other than the British, natural to take a different course from that which we did take, and to say. "We are here, we have made our place in India by right of conquest; we have established ourselves as the dominant power, we are prepared to govern the peninsula in the interests of the inhabitants broadly, but we are not prepared to tie ourselves by any agreements We will exercise power, exercise it benevolently, but exercise it as we choose, in the exercise of a discretion which shall be unfettered" Had that been the attitude taken by the Crown, everything done by them would have been referable to a term that lawyers use—"Acts of State"—nobody could challenge it. But that is not what was done What did take place, as we know, is that we started in a very modest way as a commercial Company making agreements, and the very fact that we started in India as a commercial Company may account for the fact that there has been so little attempt to achieve what was wanted by means of acts of State The natural process for the Company was to make agreements, it did not want to spend its money in fighting unnecessarily, where an agreement would save fighting, obviously it was the better business The people with whom we made alliances were potential customers The Paramountcy aspect does not begin to arise until the very end of the eighteenth century, not until the time of the Seven Years' War, when our enemy was not any Indian Power but France, and by the time that Paramountcy became a living consideration we were already tied by the bonds of alliances of friendship to the very large portion of the major Powers That aspect is brought out very clearly, as it seems to me, in that admirable Introduction by Colonel Haksar; you see the growth of policy, and when Lord Hastings, following what was really the lead of the two Wellesleys, started the system of making alliances with all the chief Powers in India, of friendship and what is called sub-ordinate co-operation, the Crown thereby took the step of completing the edifice of contract by making it generally applicable, and once that position had been reached, as it seems to me, the Crown by its own act said "We will rely for the future in India on the word of the Englishman" You will remember, from your reading of Indian history, how many observations of that kind there were by leading members of the Government in India, even in the early years—"The Englishman's word is his bond"—and they set out to control the destinies of India, not by governing the individual States but by making bargains with them which they made it their pride to carry out scrupulously and to honour completely That is why this element of discretion which naturally attaches to a pre-dominant Power of controlling the destinies of a country or a continent by acts of State has been historically excluded in India, and from the time of what I call the beginning of the Paramountcy period, 1818—November or December 1817 it may be—to the present day, all the temptations to discard the contractual obligation have been resisted by the controlling Power, the British Government There have been, as we are here to tell you, innumerable breaches, but we recognise to the full the scrupulous desire to honour the contract made by the Crown, as shown by both Royal

and Viceregal pronouncements time after time, and those pronouncements have this legal bearing on the whole situation, that they exclude the possibility of the contention on the part of Government that it has been meaning to act by means of Acts of State rather than to observe its contractual obligations. That seems to me their primary relevance, and for that reason I submit that you must exclude this notion of discretionary power. Whether you call it Paramountcy, whether you call it prerogative, whether you call it act of State, it does not matter what name you give to it, Great Britain by its own consistent policy has said " We will govern India, so far as the territory of British India is concerned, directly, and so far as the rest is concerned, by assisting the various Sovereigns of the Indian States and observing the contracts we have made with them. Where we want things done which we have no right to insist upon being done because it is not our territory, because we do not govern it, we will ask for reasonable agreements " That has been the broad policy, and let me take this opportunity here and now of saying on behalf of the States that they recognise that that has been the broad policy of the British Government, and it is because of that that they are so loyal to the Crown, and whilst they complain of individual breaches in India, or the growth of subordinate rules of policy or practice, which have interfered with the wholesome and straightforward observance of the main policy, that does not mean that they are not grateful. They are. They appreciate what has been done; they realise that another Power than the British might easily have obliterated the whole of the native Sovereignties of the country, and they are grateful to Britain for having preserved them, and in coming as they do to the Crown for the rectification of their grievances before you, they show their trust in the Crown and their reliance upon the British Government in the end to do the right thing

I thought those few observations on discretion and prerogative were germane to this question of residuary jurisdiction, because I cannot help feeling that, through so much of the misconceptions—and I deliberately called them misconceptions—that have prevailed in India, the fact that has misled more than any other has been this notion of arbitrary discretion—to be exercised benevolently and yet arbitrarily —vested in the governing Power, which in my submission does not exist.

I propose to make certain observations upon Lee-Warner's book. You will notice particularly that the Secretary of State, who drafted your Terms of Reference and who is one of the greatest constitutional lawyers that we have ever had in this country, chose particularly two words in the different parts of the Terms of your Reference, the word " relationship " in the first part and the word " relations " in the second They have a totally different meaning, which he recognised in his drafting of the Terms of Reference The relationship is the sum total of rights and obligations obtaining between the States and the Paramount power, connoted by it, which make it up. The relations which exist between the States and British India are the day-to-day contacts in fact, the meeting points of interest and opposition, and it is vital to clear thinking to keep in mind the difference between the two. Lee-Warner, in my submission, which I make with all due respect, having regard to the fact that he is no longer living, is confused in his use of the two terms In his second chapter you will find

all the time a loose use of the words, the word "relations" being used time after time where it should be "relationship" and the misuse of the words has led him into a fallacy of thought; he keeps talking of the effect of policy upon the relations obtaining at any given period between the Crown and the States, and slipping unconsciously into the conclusion that the existing legal relationship is from time to time changed by a change of policy, which no doubt did affect the daily relations but did not affect the relationship. It is a fallacy that runs right through the whole book, but is particularly observable in his Chapter 2 He rightly sees that the relations have been affected in successive periods by changes in the policy of individual Governors-General, or of the Home Government Down to the end of the 18th century, Great Britain was still struggling to preserve her footing in India as one amongst other powers in the country, fears of the French being an important factor in the situation. During that period, there was no attempt to exercise general Paramountcy After the victories over the various Mahratta States, including the Peshwa himself in 1817, and the final defeat of Napolean at Waterloo, which disposed for ever of the French menace in India, British predominance in India was assured, and a new military position was built up on the basis of the paramountcy relationship of to-day, each State giving up its foreign relations, and accepting isolation from all other States, coupled with military subordination to Great Britain, in return for a permanent guarantee of external and internal security, and complete domestic sovereignty The essence of this relationship so established was that it was by common consent to be perpetual Neither side could give notice to terminate it

But once this contractual relationship was established with each State, one party to the contract could not alter its terms without the consent of the other, and it did not matter how the policy of individual Governors-General changed, that fixed relationship could not be altered A desire to alter it may have prevailed, but it could have no operation. Lee-Warner professes to recognise the binding force of treaties and engagements with States For instance, on page 46 he says "The binding force of a formal treaty or compact between the States is fully recognised by the Government of India, and consequently extreme care is used to attach to the highest authority in India exclusive responsibility for its execution" On pages 37 and 38 he says "The position of 'Trustees for the Crown of the United Kingdom' was assigned to the Company in 1833, by Statute 3 and 4 William IV, Chapter LXXXV, and, when the trust administration of India was determined or ended by the Act of 1858, Statute 21 and 22 Vic cap CVI, § 67, enacted that 'all treaties made by the said Company shall be binding on Her Majesty' The Native States, no less than the territories in the possession or under the government of the East India Company, thus passed into the safe-keeping of the British nation A complete collection of Treaties, Engagements and Sanads was published in 1812, and again in 1845 The latter was reprinted by order of Parliament in 1853, and the well-known edition of them, compiled by Sir Charles Aitchison, with his able summaries of historical events, is periodically revised and corrected up to date by the Government of India" But, Sirs, the whole of this book is an attempt to prove that Treaties are not binding It is noticeable, in that context, that he does not even quote Queen Victoria's Proclamation of 1858, the words

why this analogy is generally inapplicable to explain the relations between the Crown and the States Circumstances analogous to particular trades do not normally exist in the relations between the States and the Crown, the two parties are not in the habit of making frequent contracts in the light of notorious usages which can be impliedly incorporated in their express agreements. There is nothing analogous to the "trade market" in which all members of the trade are habitually making contracts of the same type in relation to similar subject matter, and subject to similar conditions of performance. In the case of the States, till the last ten years, isolation has been rigorously enforced, and every arrangement between the Crown and a State has been treated, and rightly treated, by the Crown as individual to that State The example of another State having made the same agreement has often been quoted as an argument for persuading a reluctant State to execute the proposed agreement, but the consent is asked to a formulated and express agreement—usually a written one—not to any implied terms. And in those cases where it is asserted by the Government of India that usage binds the States it is not as an implied term of some admitted contract that the usage is supposed to bind, but precisely because there is no express contract in existence. The usage is supposed to bind State "A" which *ex hypothesi* has given no express consent to be so bound, because other States have, it is said, conformed to the terms of the usage But, whatever be the reasons why the other States did so conform, whether by express agreement, or by tacit agreement, or without any consent at all, and merely because they were under a belief that they were obliged to do so in virtue of some legal right supposed to be vested in the Paramount Power, or under mere pressure, their action could create no obligation legally binding upon State "A." It was plainly *res inter alios acta* as far as State "A" was concerned. As a matter of historical fact most—and I suspect all—of these supposed or alleged usages, when investigated and analysed, are seen to consist of two types of act by the States concerned and of nothing else; firstly, of individual contracts or cessions expressly made by written instrument, and, secondly, of actions done in obedience to the orders of Political Officers, given either as their own orders or as the transmitted orders of superior authority. And the express contracts so executed are in a large proportion of cases only signed by the State because ordered to do so or because some form of pressure is applied. In such circumstances it is obvious that there exist additional reasons for the legal conclusion that State "A" cannot be put under any obligation to conform to any such so-called "usage."

I accordingly answer the second half of Question 1 thus. In so far as usage or political practice have given rise to agreement they play a great part in determining the Paramountcy relationship. Usage, in my submission is meaningless and creates no obligations unless an agreement exists to be mutually bound by the usage.

As to political practice I submit that either

(*a*) Any particular political practice is provided for by some agreement, express or implied, in which case it ceases to be a political practice and no question arises, or

(*b*) Such political practice is exercisable by virtue of a residuary jurisdiction claimed by the British Government to reside in itself—

but, as I showed earlier, that residuary jurisdiction is in the States, or

(c) The political practice is an exercise of purely arbitrary power not justifiable on legal grounds

Professor Holdsworth made an observation as to our commercial law being largely founded on the Law Merchant, i.e. the custom of merchants.

Professor Holdsworth: Yes

Sir Leslie Scott This may be true but it bears out the above view of usage. It means this, when merchants entered into contracts with each other, express or implied (and all mercantile dealing, from the beginning, involved contracts of some sort) they in fact carried out that contract in a certain way and construed or operated it in a certain sense. The usage was part of the contract and a term of it, although the parties may not have been consciously aware of it—and at first there was freedom as to whether the "usage" should be complied with or not When sufficiently established *de facto* the Court took judicial notice of it Henceforth it existed *de jure*. But at no time could the usage have any binding force except as part of, and in so far as it was part of, an agreement.

Professor Holdsworth · But then the view that you first put will not really make an agreement, though it may be evidence of an agreement, and that agreement is generally acted on when made I am trying to get at your meaning.

Sir Leslie Scott · Yes, that is my meaning and it is only an illustration of our own law of merchant or commercial laws of to-day which are now codified, for instance, in the Sale of Goods Act, Bills of Exchange Act, the Insurance Act, all that body of law which represents the commercial law of England of to-day, which is to-day codified in statutory form but which before codification was our Common Law; the whole of that law is in one shape or another simply and solely a series of rules in relation to contracts; for instance, the practice of negotiability that has been tacked on to the primary contract Once the practice of accepting a document as negotiable had become general each person issuing that document knew that that characteristic would be regarded as belonging to it, and attaching to his signature, and accepted as a term of his contract. Right through it is the best possible illustration of the truth of the general proposition which I have ventured to put in that particular phrase, usages are by themselves sterile, is correct

Professor Holdsworth I am not sure that the Legislature would quite agree with you I was looking at the Foreign Jurisdiction Act of 1890 the other day and it stated in the preamble that whereas by Treaty capitulation, usage and other sources, the Crown has jurisdiction within certain foreign countries, is not that a sort of recognition that usage may be a source or right *per se*?

Sir Leslie Scott That is a very interesting question, to which I have given very close attention, in the particular portion of my speech to-day which is unspoken, and which I trust you may read, you will find that dealt with in some detail I may make this observation on it now. There is one eventuality, one type of case, where

usage, as referred to in the preamble of the Foreign Jurisdiction Act, may be non-contractual, and that is where the country over which the jurisdiction is sought to be exercised by or on behalf of the British power, has no settled Government really capable of giving a consent With that exception I venture to submit, as a general proposition, that ex-territorial jurisdiction is never in any case founded on anything but consent of the territorial Sovereign, and that a perusal of all our cases in the English courts and in the American courts, and the consideration of the views of most foreign nations too, all point in the same direction, that that proposition, as I submit it, is right. Now the broad distinction between Government countries and countries with no settled ordered Government is one that was drawn by Piggott in the first edition of his book, and I think it is a sound one. Great Britain, more than any other country in the world, has had experience of exercising jurisdiction in territories which are without any civilised or ordered Government The Protectorates that we have made in Africa, particularly, have been of that type. I had to consider that question when I was arguing the case of the natives of Southern Rhodesia, because, *you remember, that was argued just at the beginning* of the first year of the War.

Professor Holdsworth· Yes

Sir Leslie Scott: There it is impossible to say when we went in that there was any really ordered government. There were certain concessions made by certain potentates like Lobengula, but, broadly speaking, the view taken by the Privy Council in the case was that our actions there had been equivalent to conquest, and we had acquired what was, in effect, something like complete sovereignty, and were exercising local territorial sovereingty, but where an area has not been actually proclaimed a Crown Colony, and is merely treated as a Protectorate, it is in accordance with the practice of our constitutional usage to employ the Foreign Jurisdiction Act, and to treat the country nominally as a foreign country I believe it to be one of those fictions of which we English are supposed to be peculiarly fond, and to which we are supposed, especially by our neighbours across the Channel, to be peculiarly addicted We pretend that those are not what they are; and I cannot help thinking that that is the truth there You will find in some of the quotations I have given in the note, reference to that very point, in which it is pointed out that, for all practical purposes, an African Protectorate is indistinguishable from a Crown Colony. All legislation by Order in Council under the Foreign Jurisdiction Act is the way we do legislate in that type of country, but where there is a settled government, even as far back as the reigns of the Stuarts, we took capitulations from Turkey. This is an Agreement conferring territorial jurisdiction; the same in China; the same in Japan; and I venture to submit that ultimately in every case of a government where there is a Sovereign exercising his own sovereign jurisdiction over his own territory, no other power can exercise ex-territorial jurisdiction within that territory except by his consent

Now I come to your Question 2, Sirs, as to the basis of my contention that the Paramountcy, whatever its rights and duties may be, cannot

be handed over to a government responsible for Indian legislature, without the consent of the States. May I put these in the form almost of short notes, and they will go on the print, but they will be quite intelligible. These are the reasons, I suggest why the Crown cannot hand over Paramountcy to a British Indian Legislature.

(1) It is a personal contract, see the Opinion The first party is the Crown, the second party is the Ruler and his successors, the principal contracts being made with the Ruler and his successors The Secretary of State, under the Act of 1858 and the present Acts, controls India, and he is the channel of communication between the States and the Crown. The Crown cannot change the character of the contracts—they are contracts with the Crown in its personal capacity—by any unilateral act When I say "Crown" I mean that the contracts are with the Crown of England advised, under our constitutional system, by the Cabinet in Great Britain, that Cabinet being controlled by Parliament.

Professor Holdsworth: When you say the "Crown" you mean the Crown acting by Ministers responsible to the Parliament of Great Britain That is what you mean by the "Crown"?

Sir Leslie Scott: Yes, and this is academic I think If there have been any material changes since 1817 we may assume that such changes as there have been in the matter of the persona with whom the Indian Rulers contracted may be taken as having been either within the terms of the original bargain, or as assented to subsequently. I raise no point on that

(2) No duties which have been delegated to any particular person are in English law assignable, I mean contractual duties, a novation of contract is necessary

(3) Many of the functions of sovereignty which have been parted with by the Rulers have been delegated by them to the Crown, as their Agent in law. At any rate, that is an aspect which cannot be omitted I do not say that it covers the whole ground, but it is an aspect that is present in regard, for instance, to foreign affairs, jurisdiction over classes of persons or areas, railway management, all kinds of topics you can think of, where what has happened has that aspect, that the Ruler of the State is authorising the Government to do certain things for it The principle involved is *delegatus non deleqare potest*

(4) The Crown can only act through its servants, but it must not employ a servant or agent to carry out a contract to which it is a party, when the interest of that agent conflicts with his duty to the Crown and with the Crown's duty to the other contracting party In the case of British India it is obvious that the interest of the Government of British India may conflict with the interest of the States, and therefore with the obligation of the Crown to protect the States and to carry out its contracts with them

(5) If, as is admitted, the Crown has been guilty of breaches of paramountcy agreement, and if it now hands over paramountcy to an Indian legislature, the position will become stereotyped, the Government of British India will claim that it received, so to speak, its heritage with whatever the practice of past years had made the relations with the States, it will be almost impossible to get things undone which, in the submission of the States, have been done wrongly

(6) The majority of the present subjects of British Government were formerly subjects of the Princes; so that if paramountcy were handed over to a Government of India controlled by a British-Indian electorate, paramountcy would be operated by persons who previously had been the Princes' own subjects.

(7) How is it suggested that transfers should be made? By abdication of the Crown? If so, the States would be released from their obligations. By Act of Parliament? If the Crown alone cannot do it, it cannot do it any more with the help of Parliament. Is it proposed that the British Government, the Crown in its constitutional capacity, should wash its hands of its obligations to the States? If it be, there would never in history be such a washing of hands since the days of Pontius Pilate

(8) Let me put the plain view of the man in the street, by which is usually meant the ordinary Member of Parliament, of any party. Such a transaction would be a blot upon the good name of Britain in the pages of history, a scandal and an enduring shame.

The Crown is Great Britain—the King advised by the British Cabinet responsible to the British Parliament It is as such that Great Britain has given its sacred word, by authorising the treaties and by authorising every act by which the East India Company and the Government of India have committed Great Britain and obtained the consent and demanded the loyalty of the Princes

In defence, in foreign relations, in every function great or small, entrusted to the Crown by the States or any one of them, the confidence of the Princes has been reposed in the Crown in that sense. Take one illustration, that of military defence. The Crown has contracted to defend each State from external attack and internal commotion. For that purpose the Crown has to have in India, available for it, its Army, under its orders, its own orders. It was because the Crown undertook the obligations of defence that the States were willing to give up their foreign relations and to put the limitation of their armaments under the control of the Crown's discretion Upon the basis of that contract the Crown has undertaken, given its sacred word, to protect the integrity of each State and all its rights and powers; and the personal word of our Sovereign has been committed; we are bound by treaty to protect each State We were bound by treaty to protect Belgium and we fought the Great War to make good our word There may be a couple of hundred Belgiums in India. It does not make our obligation any less sacred or any less binding Great Britain cannot give up the control of the Army in India, or any part of the Army in India, to any Government of British India; it must keep the complete control in its own hands—the Government of Great Britain here in London—and cannot give it up. It is no use anybody in British India demanding a Dominion status, inconsistent with the retention by the Crown of this country of complete control over the armed forces of India, because it would mean this country breaking its sacred word to all these Belgiums in India. The States are willing enough and anxious enough to co-operate with British India for the good of India as a whole, and prepared, as I have said more than once, to enter into

machinery for the purpose in the future; but they are not prepared to give up their rights, including the right of holding Great Britain to its word

Similar considerations apply to every one of the obligations assumed by this country in regard to the States. Wherever the Government of India claims to-day to be entitled to do things within the territories of the States, and that claim is admitted by the State as covered by a contract between them, the State is entitled to require that it shall be Great Britain that does it And the States cannot be compelled, without their free consent, to agree to a Government of British India, not controlled from London but controlled by an elected body in British India, doing any one of those things The position of the States is that they are there, that they have been loyal, they saved Great Britain in the Mutiny; they helped in the Great War (the best recruiting in India comes from within the States), and they say to-day: "We stand on our rights and know you will honour them, on that footing we are prepared to negotiate with the Crown, with British India, but you have to ask us"

Now, Sir, the next subject I propose to take is Minorities and Administrations, for instance, in the case of the mental incapacity of a Ruler, or after deposition I told you I would not on last Thursday put in the details about minorities as I did with the other branches of the evidence What I propose to do with your approval is to hand in this considered passage about minorities like the others You will find attached to it a summary of some of the things done during minorities, of which the States complain, and following that a list under the various heads of the classification, A (a) 1, etc, and another list, under the names of States, of the majority of cases of things done in minority or other administrations of States by the Government of India, most of which the States say ought not to have been done, and I would ask your attention to those cases I am afraid they are rather troublesome, because they mean turning up a great number of references, but I believe you will find them of value

Chairman Those are cases previous to the Resolution of the Government of India of 1917 in which they laid down the policy to be observed with regard to minority administrations in future?

Sir Leslie Scott: Yes, most of them are, I am not certain whether all of them are But you will remember that in making that rule the Government of India were dealing with the future and not with the past, and what the States would submit in regard to that is that there is an opportunity for the Government to fill the *lacuna* that was left in their enunciation of the rule by making compensation for the past, and that there would be no objection to the Government handing back to the States the crores upon crores of rupees which, the States submit, have been improperly taken from them. You must not treat me as accepting, on behalf of the States, that formulation as wholly satisfactory. You will find in this note submissions as to the position which I make, and amongst others are two in particular: firstly, that there is no general right, upon a minority happening, for the Government to assume the

administration; secondly, that whenever it is in fact administering a State, whether rightly—that is to say, pursuant to a consent of the State—or wrongly, there are two principles which must regulate its conduct, firstly, the principle that no trustee may make a profit out of his trust—which applies to certain types of action in the past where the Government of India has gained pecuniarily, as for instance, salt agreements or closing of mints—but there is also another principle, that they are bound by the contract, contained in the agreement of Paramountcy and in the Treaties, not to interfere or alter any of the powers or rights or possessions of the State, and that principle, that contractual covenant, must modify the freedom of their discretion in administering In particular cases it is obvious that the inter-action of the two principles may be sometimes difficult, but the difficulty of working out a principle in every individual case is no reason for refusing recognition of the principle If I may remind you of that admirable letter (No. 1846, dated 11th May, 1889) written upon the instructions of Mr. Henvey, A.G.G. for Central India, which you will find in the Rewa case in the printed evidence, and addressed to the Administrator of Rewa during a minority,—

> " Your action may be guided by three canons Firstly, you should do what a Rewa Chief of ordinary prudence and judgment would probably do Secondly, you should not do what such a Chief would probably not do Thirdly, you should not give any guarantee that may hamper the Chief in the future exercise of his lawful rights and privileges "

Had those simple canons always been observed I wonder whether we should have been here to-day.

Sir, I will hand in this Note. I would like to make this observation upon it I have put down what seems to me to be the kind of legal considerations that affect the question; I confess freely that difficult questions are raised and I have put down there my own *prima facie* views of certain aspects of the case, but I am sure that Professor Holdsworth will sympathise with me when I [illegible] y novel problem, when one has not had [illegible] in court and hearing the views of the o[illegible] el some diffidence in expressing dogmatic opinions I have no doubt that there is a great deal more to be said, possibly on both sides, on the various questions raised in the Note than I have said, and I put it forward in all modesty.

A (a) vii. NOTES ON RIGHTS AND DUTIES OF THE CROWN IN REGARD TO MINORITIES, &c.

On Thursday, the 18th of October, 1928, when the case of Rewa, about the proprietary rights of certain landowners, was being discussed, certain observations were made and questions asked by members of the Committee

(a) Upon the rights of Government during the Minority Administration, and

(*b*) Upon the binding character of the action taken by a Minority Administration, whether under the control of the Government of India or otherwise.

In the case in question the Political Agent had objected to a re-examination by the State of the land rights of certain persons on the ground that "the grant had been sanctioned by the Superintendent during the minority" I said then that I would deal with the subject at a later stage, and I therefore propose to submit certain considerations as to the principles to be applied

For the purpose of the two questions I make the assumption—without at present discussing it—that the present practice of Government to intervene in every Minority can be justified in law, merely pointing out that if it can be, it must be because, during a Minority, the ultimate responsibility for safeguarding the interests of the State rests upon it under the agreement of paramountcy by which it has undertaken the obligation to protect the States If so the Government is, during the Minority, whilst it is in charge, necessarily in the position of a trustee Therefore I submit without hesitation that whether the representative of the Government of India be directly administering the State or indirectly controlling its administration in a supervisory capacity—the method often adopted by the Political Department—the Government is not entitled, whilst so acting as Trustee, to make any changes or take any steps which bring to itself, as representing either the Crown or British India, any advantage or gain.

But there is one other plain limitation upon the British Government's freedom to do whatever it likes when administering a State during a Minority, besides the duty of a trustee not to make a personal profit out of his trust If, when the State is being governed by its own Ruler in possession of full powers, the Crown has no right to interfere in its internal affairs—no right to order the State to make a change in its internal administration—as for instance to cede civil and criminal jurisdiction over any particular area of the State, or to agree to give up a separate State currency and abolish the State Mint, it follows that the Crown would be equally debarred by its contract from doing these things during a Minority It may be conceded that in every State —and I speak of States generally and not merely of Indian States under British Paramountcy—a Regency Government is no less sovereign *within the State than the full-powered Ruler which it has succeeded* The subjects of the State would obviously be estopped from denying its absolute power either as an Executive Government or as a legislative authority It may be that, even in its external relations, every State under Minority administration must be regarded as possessing the same degree of Treaty making power vis-a-vis another State as when governed by a full-powered Ruler The comity of nations forbids investigation into the degree of sovereignty possessed by the Government of another State when that Government is recognised not only *de facto* but *de jure* and the same considerations were also applicable to Indian States in days before Paramountcy, at least to those States which were not dependent on any other Under International Law, if State "A" during a Minority, makes an agreement with State "B" ceding to

State "B" a portion of its own territory, the Ruler of State "A" on succeeding to his full powers, may well be precluded from contesting the validity of the cession. But most of the rules of International Law governing the former relations of Indian States have been rendered inapplicable by the agreement of Paramountcy between the Crown and the States, because the relationship has been lifted out of the realm of *customary law—the consensus of opinion of free and independent* nations—into a *régime stricti juris*—that of contract. The cession of the external powers of sovereignty concerned with foreign relations by each State to the Crown imposed upon the Crown an implied obligation, not merely to protect the State against external attack by military force, but to preserve the State as it existed at the time when the agreement of Paramountcy was made, with all the territories, rights and privileges unimpaired for ever. This is the precise obligation affirmed and re-affirmed in the Royal Proclamations and Viceroy's Pronouncements ever since the Mutiny. It is a simple legal obligation, deducible directly from the terms of the Paramountcy Agreement. You see it well illustrated by the *Walker Settlement of Kathiawar and the* analogous settlements which were made shortly afterwards of the States of Mahi-Kantha and Rewa-Kantha. The obligation assumed by the Crown there, in return for the undertakings of the various States, was to guarantee to them for ever the state of possession and power as it existed at the time of the settlement; see letter of Government of Bombay, No. 549, dated 19th December, 1831, quoted in *Vallabhdas Resolutions*, Vol. IV, page 11.

"On our first interference in 1807-08 Lieut.-Colonel Walker promulgated by an address to the Chiefs the objects we had in view; and proclaimed that this was confined to the settlement of the *regular payment of their tribute; that no encroachment on their* landed rights or their independence was contemplated—*and that the state of possession and power, as it then existed, was to be guaranteed;* and at the same time both the British and Gaekwar Governments concurred in the policy of abstaining from a spirit of aggrandisement, and from every encroachment on the rights or possession of the Chiefs On the faith of these assurances the Chiefs entered into the measures suggested to them by agreeing to pay a fixed sum annually as hitherto, and also passed a security bond to abstain from any violent attacks on each other; to afford compensation each for the acts of his own subjects and for all injuries sustained by any Chief or any of his subjects; to be responsible for criminals taking shelter within his possessions; and also from preventing banditti passing their districts to plunder other territories."

"We place ourselves as the guarantee between the several States for the due fulfilment of the above conditions, and are, therefore, when appealed to, bound to *enforce them*" (*vide pages 402-3*, "The Gaekwar and his relations with the British Government" by Colonel R. Wallace, late Resident, Baroda). See also other quotations in the appendices to the case of Jasdan, A (a) i, page 206

The case of Kathiawar is illuminating because it introduces the factor of the relationship of the Crown, not merely to each State with which it has made an agreement of Paramountcy, but to many States, all bound by identical agreements with the Crown, and by that very fact having a definite inter-relationship of a permanent kind imposed upon them by their several agreements, although no direct contracts exist between the States *inter se.* The resultant duty of the Crown is, as stated in the quotation already given, to preserve each in its relative position to the other. But if it be the duty of the Crown to prevent one State becoming aggrandised in territory or powers at the expense of another, *a fortiori* is it the duty of the Crown to abstain from aggrandising itself at the expense of any one of the States, for the Crown lies under a permanent contractual undertaking to preserve to each State the possession of all its rights, privileges and powers.

The principles of the above obligations of the Crown apply equally whether the State is at the moment governed by a full-powered Ruler, or under an administration imposed upon it because of a Minority or for any other reason They apply for instance equally when the Crown continues in control of a State after it has exercised its Paramountcy power to depose the Ruler on the ground that he is endangering the State's security which the Crown has contracted to protect.

Let us apply it, however, directly to the case of a Minority Administration *Ex hypothesi* the fact of Minority does not relieve the Crown from the duty to protect and preserve all the rights of the State. It has a duty to maintain the *status quo,* there is a breach of duty if the *status quo* is altered It is not for the Crown to judge whether an internal alteration is desirable or undesirable, good policy or bad policy. It is not the concern of the Crown but the concern solely of the sovereign authority in the State. Under the Constitution of the State itself there is always, when a Minority happens, some authority which is recognised as possessed of the State's sovereignty, whether it be a Council of Regency or an individual Regent, or a person nominated by other States pursuant to an arrangement previously made, as in the case of the Phulkian States Agreement of 1858 But whatever the person or body, which according to the Constitutional Law of the State itself is entitled to exercise sovereign powers during a Minority, it is the discretion of that body, and not of the British Crown, which must decide whether a given step should be taken or not taken, a proposed change made or not made

There is another obligation of the Crown which may be regarded as a complement of the Paramount Power's undertaking to preserve the existing powers of the State It is the term which is well known, and is expressed in many Treaties, by which the Crown acknowledges the absolute sovereignty of the Ruler inside his State and undertakes not to interfere. In many cases, as is also well-known, States have by Treaty or special engagement conceded to the Crown by express agreement greater or less powers of control, as for instance, Mysore, which was created by a grant from the Crown in 1799, subject to stringent

powers of control and intervention, came into existence with an originally *modified sovereignty*. In *other cases the State was already* feudatory of another State and subject to its control when it first came into relationship with the Crown, through the Crown stepping into the shoes of the original suzerain State by conquest or cession. In such cases the Crown succeeded to the powers of control previously possessed by the suzerain over its feudatory. But where there is either no Treaty, as in the case of Kathiawar or Tripura or Seraikella, or there is a Treaty like that of the Rajputana States of 1818, expressly forbidding interference, it is plain that the Crown's express or implied undertaking towards the State not to interfere is equally applicable when the State is under Minority Administration as when governed by a full-powered Ruler.

But on the other hand, still on the original hypothesis that the Crown is entitled to intervene in every Minority and administer the State until the minor Ruler reaches an age when he can be entrusted with full powers, it is plain that this right of administration, if it exists, must confer upon the Crown some discretion to conduct the administration in the way which it conceives to be best in the interest of the State. But even so, not only must the obligations of a trustee rest upon the Crown, so as to debar it from making any profit out of its trust, but the undertaking to preserve the integrity of the State's possessions and powers must continue to bind the Crown, and cannot be treated as abrogated or suspended. And these two duties necessarily operate to limit the discretion which, as administrator, the Crown might otherwise have claimed. The recognition of these limiting factors was, consciously or unconsciously, no doubt the explanation of the admirable letter from Mr. Henvey, A.G.G., in Central India, in the case of Rewa (page 1208 of the evidence—letter No. 1846, dated 11th May, 1889, from the First Assistant to the Agent to the Governor-General for Central India to the Political Agent, Baghelkhand and Superintendent, Rewa).

"A British Officer superintending a Native State during the minority of its Chief should always bear in mind that he represents in the State not only the Paramount Power, but also the minor whose affairs he is superintending; hence he should endeavour to identify himself in sentiment and policy as closely as possible with the Chief, and he should not, save for grave and urgent reasons, initiate or support measures of administration which the Chief would most probably disapprove of and reject if he were of mature age. This principle is subject to exceptions and modifications which may be required by the demands of progressive civilisation and by the exigencies of the State. But, as a general rule, it appears to the Agent to the Governor-General to be indisputable, and careful observance of it affords the best hope that a policy of cautious amelioration will be continuously maintained, and that the Chief will not be tempted, when he comes of age, to reverse or undermine the steps taken during the period of his minority, and especially in matters connected with religion is extreme prudence of action of the first importance

. . Accordingly Mr. Henvey (the A.G.G. for Central India) thinks that in view of the considerations above set forth

and on the principle explained in paragraph 2 of this letter your action may be guided by three canons:—

> Firstly, you should do what a Rewa Chief of ordinary prudence and judgment would probably do.
>
> Secondly, you should not do what such a Chief would probably not do.
>
> Thirdly, you should not give any guarantee that may hamper the Chief in the future exercise of his lawful rights and privileges.

. . . In conclusion, I am to say that you are authorised to communicate the substance of these orders to the parties concerned, and I am to request that you will in due course report the arrangements you may make for carrying them into effect."

Had those wise rules of guidance been followed in all Minority administrations, the grievous sense of injustice would never have been felt, by the order of Princes as a whole, as it is to-day, in regard to what they regard as the robbery of their rights during Minorities.

The adjustment of the competing principles above referred to in the facts of any particular case may not always be easy, but the great majority of the instances contained in the volumes of evidence, from which I have selected a considerable number in the accompanying list, are plain cases upon which, I submit, there can be no doubt that what was done was wrong—at least in the great majority of them, possibly in all

Still upon the same assumption that the Crown is entitled to administer every State during a Minority, three things at any rate seem clear. firstly, the fact that a change has been made under British orders raises no presumption that it is more binding upon the State than if it had been made by a full-powered Ruler, secondly, if the change involves an alteration in the relations, i e, the mutual rights and obligations between the State and the Crown, that fact of itself *prima facie* entitles the State to denounce the alteration as a breach by the Crown of its contractual obligations to preserve the possessions and powers of the State in their *status quo ante*. thirdly, no change should be made which is bound to be permanent in its effect, unless it is one which is so obviously essential in the interest of the State that there could be no doubt that a full-powered Ruler, acting in accordance with the traditions of the State, would have made it, had he been in power.

For the purpose of the questions considered above I made the fundamental assumption that the present practice of the Crown of intervening in every Minority was within its rights, but I venture to doubt it The question is one which calls for reconsideration The Crown possesses no prerogative rights over the States over and above those that have been conceded to it by the consent of the States Its rights are defined and circumscribed in each case by the Paramountcy Agreement and the terms of particular Treaties and Agreements, affecting matters other than Paramountcy, entered into by the State in question.

Under the Paramountcy Agreement the Crown has a duty of intervening for the protection of the State where the security of the State is imperilled by internal dangers equally with external. If upon a Minority happening there were in fact, in any particular case, the danger of civil strife, the Crown would be under the duty and equally have a right to intervene. But obviously such a duty is of a temporary character, and the right of remaining in control terminates automatically when the object of the intervention, viz.; security, has been attained What then is the ground upon which the Crown claims to justify its present practice of continuing in charge throughout every Minority? That in order to implement its undertaking to protect the State in its possessions and powers it should keep a watchful eye on the conduct of the State's administration by its Minority Government may be conceded. but that it should be entitled to give orders to the Regency Council, or bring pressure to bear upon it, I respectfully deny, unless the position is one in which the security of the State is endangered.

If the right of the Crown to administer a State because of a Minority does not exist, it follows *a fortiori* that the Crown has no right to impose restrictions on a young Ruler upon his attainment of majority and succeeding to the exercise of actual sovereignty. The right of succession is one of the rights possessed by each State in accordance with its constitution; a contract made by Treaty with the State is often expressed to be with the then Ruler and his heirs and successors. The right of succession, being one of the powers of the State, is as much covered by the Crown's guarantee as any other power. I therefore submit that there can be no legal ground entitling the Crown, in the absence of any danger to the security of the State, to impose any limitations upon the exercise of full powers by the Ruler who has come to years of discretion, and is therefore entitled, in accordance with the rules of the constitution of the State, to succeed.

The truth is that in each State, according to the Constitution of the State, there are arrangements in existence for continuing the exercise of the State's sovereignty even in the event of a Minority. [illegible] of the unwritten law and custom of the [illegible] the subjects of the State as the Common [illegible] subjects of the British Crown. If the [illegible] ncient laws and customs in the form of a sovereign decree, passed by the Ruler like any other Legislation of the State, the position would become clear, and the truth would become obvious, namely, that when the British authority intervenes it is interfering directly with the normal working of the internal law of the State and, therefore, committing a direct breach of one of the fundamental terms of the Paramountcy Agreement, viz; that it will not interfere unless the security of the State is imperilled.

It may be convenient to summarise the position:—

(a) The Crown has no right to insist upon conducting the Minority Administration of the State, whether directly or indirectly. It can only intervene at the request of the State Such a request is presumably beyond the powers of any persons exercising sovereign authority in the State upon a Minority happening, as the law of the State imposes upon those persons, whoever they may be, the duty of themselves exercising the State sovereignty,

and does not authorise them to delegate it to any foreigner, whether it be the British Crown, or anybody else. The request, therefore, to be valid must be the request made by the Ruler before his death, in such a manner as to confer legal authority upon the future Council of Regency of the State to invite control, during Minority, of the British Crown I believe one or two instances exist of such a request having been made, but they would, of course, be individual to the particular State and affect no other State

(b) Even if it be assumed that the above view is wrong, and that the practice of the Crown of intervening has legal justification, the powers of the Crown, as administrator of the State, would be definitely limited by the two principles discussed in the earlier part of this Note:

(i) the Crown, being in a position of trustee, can make no profit out of this trust. For the purpose of this fiduciary duty British India is, of course, the Crown.

(ii) having contracted with the State to preserve in their integrity the State's territories, rights, privileges and powers, the Crown cannot ignore this duty in carrying on the administration. The Crown is thus affected by this second principle in regard to every action involving a sacrifice of the State's rights, even although the Crown may not at the same time be benefitting itself so as to create a breach of trust within the meaning of the first principle.

During Minorities the Government of India or their Officers have —

(a) Sold, sometimes to their own Government, properties which, besides being valuable, possessed a sentimental attraction of a kind which made their alienation almost a sacrilege in the eyes of the State

(b) Permitted the erection of public buildings, and the commencement of public enterprises, without estimating with sufficient care the recurring costs of maintenance and operation

(c) Obtained cessions of territory and of jurisdiction without due regard to the rights of the States which it was their duty to preserve.

(d) Disregarded the local religious sentiments of the States in a manner amounting to sacrilege.

(e) Conferred upon feudatories of the State rights adverse to those of the Suzerain

(f) Closed mints and salt works and introduced their own public servants and administrative agencies, sacrificing the pecuniary interest of the States and of their subjects, whilst ensuring large and increased benefits to the revenues of British India

(g) Removed, at the termination of the minority, the records of their administration, and denied access to such records

(h) Declared States to be under obligations to which they were never subject, e g, *Nazarana*

(i) Imposed, as a condition of the termination of the minority administration, irksome and hampering restrictions upon the powers of the Prince.

Particulars are as follows:—

ACTIONS TAKEN DURING MINORITY ADMINISTRATIONS, &c.

Index by Subjects

ACTIONS TAKEN DURING MINORITY ADMINISTRATION, &c.

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"	A(a) xiii	1420	"The Maharajah died suddenly on 14th November, 1862, leaving a son, Mahendar Singh, twelve years old, whose succession was recognised by the British Government In 1858 the Chiefs of
" .	A(a) xiv.	1458	
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			Patiala, Jind and Nabha had preferred certain requests to the British Government, one of which was that in the event of the death of any of them, leaving an infant heir, a Council of Regency, consisting of three old and trusted ministers of the State, not related to the heir, should be selected by the British Government acting with the advice of the other two Chiefs This request was granted. On the death of Maharaja Narendar Singh it was argued by the Chiefs of Jind and Nabha that the terms of the Sanads of 1860 gave them the power of superseding at will the arrangements to which they had asked the British Government to consent in 1858. But the Sanads in reality made no change in the status of these Chiefs towards the British Government; they were merely to exercise such sovereignty as they had been accustomed to exercise. The argument was therefore untenable, and a Council of Regency was formed in accordance with the arrangements of 1858." (Aitchison, Vol. VIII, page 175.)
			This agreement was thus enforced on Patiala in 1862, and again followed in 1876.
			"Maharajah Mahendar Singh died on 14th April, 1876, leaving two infant sons. The elder, four years of age, was recognised by the British Government as the late Maharaja's successor. For the administration of the State during the minority of Maharaja Rajendar Singh a Council of Regency was selected in accordance with the arrangements sanctioned in 1858, and the State remained under its management until 1889, when the Maharaja

State.	Subject.	Page.	Remarks
			was invested with powers tentatively." (Aitchison, Vol. VIII, page 176.) But when there was another minority in 1900 the agreement was ignored " Rajendar Singh died on the 8th November, 1900, and was succeeded by Bhupindar Singh, who was born on the 12th October, 1891. During his minority the State is being administered by a council of regency, and it was placed on the 16th January, 1901, under the control of the Political Agent of the Phulkian States" (Aitchison, Vol VIII, pages 177/8.)
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A (a) viii —Successions

There is one other topic upon which I desire to put a submission on record, and that is, successions. *Where the right of succession is really disputed and cannot be settled in the State itself, the States are* content to accept the arbitrament of the Crown But where there is a successor, entitled by the constitution at law of the State to succeed, whether a natural heir direct or collateral or an adopted successor, there I submit the successor succeeds as of right, and is entitled to act forthwith—*Le roi est mort, vive le roi* The Crown has no right to intervene and is bound to give recognition automatically, and cannot withhold from the successor immediate exercise of full powers Reference may usefully be made to a despatch from the Government of Bombay to the Secretary of State, No 19, dated 27th March 1861, which contained a note of the Government of Bombay, extracts from this note are printed in Appendix " Y "

Certain questions have been raised upon Counsel's Legal Opinion of July last, which may perhaps also have occurred to members of the Committee, and I ask leave to deal with them

"The Indian States were originally independent, each possessed of full sovereignty, and their relationship *inter se* and to the British Power in India was one which an International Lawyer would regard as governed by the rules of International Law." (Paragraph 1 of the Legal Opinion.)

This sentence, it is said, appears to be too unqualified to be wholly accurate in its statements of fact. I have been asked to explain a little more fully what Counsel had in mind, in the light of the fuller information now available

Certain doubts have been felt as to the precise meaning of the sentence, some thinking that Counsel were ignoring the diversity of status which characterized the States before the British relationship was established, and that they have failed to recognize the real subordination of some States to their suzerain State. It is desired to know whether Counsel did intend to imply that all States were equal, or whether they were only speaking in general terms about the full-powered States, and not intending to refer to feudatory States. I have been reminded that there were the following different classes of States.—

(i) States which enjoyed full and complete sovereignty such as Baroda, Bhopal, Gwalior, Hyderabad, Indore.

(ii) States which were dependent *de jure* by reason of an obligation to pay defined tribute, but sovereign *de facto*, such as Bundi and Kotah who paid tribute to Gwalior.

(iii) States which were then created by, and owe their present existence to, the act of the British Government at that time, such as Mysore created in 1799, or Benares in 1911, out of British territory (which may or may not have been annexed at an earlier date from a State of the same name) or by dismemberment of other States, e g., Jhalawar out of Kotah Mysore was re-created in 1799 after conquest

(iv) States which lost their independence and separate existence for a period but were restored to their former status and rights by British Government, such as Mysore in 1881, and some of the Simla Hill States in 1815

(v) The States which at present form the class of mediatized and guaranteed States, and were dependent *de jure* and *de facto* on other States, and possessed only limited sovereignty, such as Rutlam. (Aitchison, Vol. IV, page 409.)

It is, in my view, important to realize that in all cases, except (a) where the State was created or re-created by a grant from the Crown, and (b) Class (v), a feudatory State where the Crown only mediatized between it and its suzerain—the "mediatized States" of Class (i), &c, when the British Government entered into negotiations with a State for the conclusion of a Treaty it purported to treat with the State in its own right as a High Contracting Party capable of contracting independently of any other State; and when the Treaty was executed between the two High Contracting Parties, each treating the other as contracting in its own right, in our opinion neither could thereafter deny the independence of the other This conclusion applies

with equal force both to the case of a Treaty where the contracting State accepts for the future internal control by the Crown, and to the case where the Crown contracts that the State shall for ever have absolute internal sovereignty In the latter case it is on ordinary legal principles plain that the Crown cannot turn round and claim to impose any qualification upon that sovereignty by reason of some alleged previous suzerainty to which it sets up a succession, in the former case the State, having by the Treaty with the Crown contracted to subordinate itself to the Crown, must be presumed to have been free to dispose of its sovereignty as it chose, the Crown cannot be at liberty to deny the title of the State as grantor to the subject matter of the grant, viz., those sovereign rights which, by conceding future internal subordination, it has granted to the Crown.

We ought perhaps to have guarded against misconceptions by expressly excluding mediatized States Where the so called "mediatized" agreement is made the primary contract is made between the subordinate State and its suzerain, but that contract is also executed or countersigned by a representative of the British Government, and although there may be no clauses defining the contract into which the British Government enters, it is none the less common ground that the British Government does thereby make a contract with both the other contracting parties It is often referred to as the guarantee of the Government, because it constitutes a contractual obligation on the part of the Government to see that the undertakings of the two parties in the primary contract are carried out. In such a case if State "A" be the subordinate State, and State "B" the suzerain, it is obvious that State "A" cannot be called an independent State at the moment of coming into relationship with the British Counsel's minds were not upon this type of case at all when we wrote the sentence in question. We were contrasting the contractual type of relationship which exists between the Crown and the Indian States with the non-contractual relationship existing between independent nations, which is the subject of International Law. Our observation that as between themselves the relations of the States of India before they came into British relationship were subject to what the modern jurist would call International Law is correct, but we did not mean to imply that even in these days there could not be between particular States such contractual relations as characterize the relationship of a Suzerain and its feudatory

Our sentence was equally inapplicable to the case of a State created by the British power. It obviously was not independent before entering into relationship with the Crown because till then it did not exist at all Nor to the States which, being in greater or less degree dependent upon some other (e g, to the Peshwa or Gwalior), were given independent status by the act of the British Power which made the Treaty with them.

There is, I believe, some degree of misapprehension current that tributary States are in some sense feudatory or subordinate or not possessed of full sovereignty This is an error (though not one of which Lee-Warner is guilty, see his last Chapter) If their position be examined, it will be found that apart from the payment of tribute there are several instances of tributary States which enjoyed full and complete sovereignty, whether internal or external To take one type, the States of Jodhpur, Kotah, Bundi and Jaipur were, at the time

when they entered into relations with the British Power, tributaries to Holkar or Sindhia. But these States did not, by payment of tribute, lose or surrender any of their sovereign rights and were, for all practical purposes, sovereign *de jure* and *de facto* The Kathiawar States stand in a similar position, for they possessed and exercised all rights of sovereignty although they paid tributes to the Peshwa and to his General, the Gaekwar. The British Government succeeded in 1817 to all the rights of the Peshwa in respect of the Kathiawar States, but admits the correctness of the above view. In 1830 it was authoritatively laid down that "the British rights in Kathiawar were limited only to the exaction of tribute" In his report, dated 14th March, 1804, Colonel Walker says, in paragraph 3, that "with the reservation of their acknowledged tributary payments, the Kathiawar States are independent and at liberty to form connections with other powers. They are under no obligation of service and neither the Peshwa nor the Gaekwar pretend to exercise any authority in Kathiawar beyond the demand of their respective contributions" (*vide* Walker's Report, page 45) In his report of the 20th July, 1806, on the former condition of Gujerat, he said, paragraph 60: "In respect to exterior relations, they appear to have exercised the same freedom The external interests of such petty States could not have extended far, and may be supposed confined in great measure to their own neighbourhood, but they enjoyed the right of peace and war with each other; they formed such connection as might be necessary for the extension and security of their commerce, they built fortifications and maintained troops Nor does it appear that any of the States to whom they paid tribute ever interfered in their transactions, whether foreign or domestic, so long as they were not inimical to themselves." (*Vide* Walker's Report, page 31.)

Now, Sirs, the next portion of my remarks can only be described as a series of Notes upon the evidence. (See Appendix "Z") I have headed it thus: "Various particular aspects not precisely covered by classification headings but which afford evidence that (1) the system is responsible for the evils of which the Princes complain, and not any unfortunate sequence of accidents nor the disabilities or misconduct of individual officers of the Political Department, and (2) that the system is bad in that (a) its tendencies are inevitable, (b) its results must be injurious." Do not think from the generality of the statements in that Note that I am not alive to the fact that the statements are too general and too sweeping, but it is sufficient for my purpose to call your attention to the points with this word of caution to cover them. I will not trouble to go through them, but you will see that they are Notes with headings all the way through, of perhaps too general a type, perhaps containing epithets that are too strong and so on, but they are sufficient to draw your attention to the points.

The other observation I desire to make upon it is this I had intended to collect under these various heads a great many more illustrations, but I frankly confess that I have not had time to do it. You may feel surprised that I had not. Therefore will you please treat the illustrations there are there as casual ones put down when I just thought of a point, and bear in mind that they do not profess to be anything like exhaustive, they are just casual points that occurred to me that I think may be useful in drawing your attention to aspects that you might like to follow up in greater detail.

Now, Sirs, would you allow me to take the Legal Opinion and make one or two small observations upon it before I come to the third question? There is a passage in paragraph 1: "The Indian States were originally independent, each possessed of full sovereignty, and their relationship *inter se* and to the British Power in India was one which an International lawyer would regard as governed by the rules of International Law" There are two points that I want just to mention there, Sirs. Certain persons connected with the States have raised the question as to whether that sentence "The Indian States were originally independent" may not be a little misleading, and perhaps inaccurate, and I want to make two observations: firstly, that the payment of tribute did not affect the independence of the States. There is a quotation from Sir James Peile's letter—written, I think, in the 70's, I forget when—in which he refers to a letter from Colonel Walker, the Resident at Baroda, just before the Walker settlement, and the sentence quoted by him is this: "With the reservation of their acknowledged tributary payments, the Kathiawar States are independent, and at liberty to form connections with other powers They are under no obligations of service, and neither the Pashwa nor the Gaekwar pretend to exercise an authority in Kathiawar beyond the demand of their respective contributions." You will find that, Sirs, in the Kathiawar Directory for the year 1886, Part I, page 14 The date of the Resident's writing, I think, was 1803 And would you look also at Hemchand's Case, VIII Bombay Law Reporter, at pages 183, 198, 200 and 201? In paragraph 1 of our Opinion we state: "As the States came into contact with the British, they made various Treaties with the Crown So long as they remained independent of the British power, International Law continued to apply to the relationship. And even when they came to transfer to the Crown those sovereign rights which, in the hands of the Crown, constitute paramountcy, International Law still applied to the act of transfer. But from that moment onwards the relationship between the States and the Crown as Paramount Power ceased to be one of which International Law takes cognizance" The two comments I want to make, Sirs, are these. First of all, will you read that sentence in the light of the passage in paragraph 5 (d), beginning "But the characteristic relationship between nations . . . . ." The broad point is that whereas the character of legal obligation under the regime of International Law is that force and obligation is conferred by the consensus of free and independent nations to practice which is generally followed, when States came into treaty relationship with the Crown they came into a permanent relationship which completely excluded the application of that form of obligation which is characteristic of International Law, namely, the consensus of free and independent States, free to act independently, agreeing in practice, assenting in practice, or approving in practice, of practices that are generally followed. The moment they became under the Paramountcy, at any rate (and this is the dividing line, of course), they were no longer free, because they had completely given up foreign relations. That is what excluded International Law in the full sense. Of course, we do not mean that there are no principles which are recognised at the Permanent Court of International Justice at The Hague which are not applicable to questions that are raised between the States and the Crown. Many principles of law are

basic and illustrated in International Law as well as Municipal Law, and sometimes better. That makes that position clear.

Then in paragraph 3 (b) the passage I want to quote begins thus, but it is the latter part which is relevant (this is shown in italics): "In this section of our Opinion we have up to now been dealing with transfer of *territory, or sovereign rights as between independent States,* whose relations are subject to the rules of ordinary International Law. But our conclusion that in that field consent is essential to every transfer, which is not in essence a forcible taking by the more powerful State, *is even more true of a transfer to the Crown by an Indian State at any time after it had come into permanent contractual relationship with the Crown by agreeing to the paramountcy of the Crown in return for its protection*" Till then, their relations had remained subject to the rules of International Law, because it was only after coming into permanent contractual relationship with the Crown, by agreeing to the paramountcy of the Crown, that our observation is applicable. Then we go on "For where the relationship is thus created by an agreement which, by its express or implied terms, defines the permanent division between the Paramount Power and the Indian Ruler, of the sovereignty over the State's territory, any further act of acquisition of sovereign rights, by force or pressure, is excluded by the contract itself. In order to acquire any further sovereign rights the Paramount Power must ask for and obtain the agreement of the protected State. To take them by force or pressure would be a direct breach of the contract already made." I invite you to illustrate that passage by the case of Kathiawar States and the guarantee given in 1808 for ten years, and then made permanent, that they should continue in their then state of possession and power Then we go on· "This position is frankly acknowledged by the Crown We quote in the Appendix some of the chief historical pronouncements which have been made upon the British attitude towards the Indian States." I want to make this observation upon those pronouncements The value of these pronouncements is not capable of full estimation by any legal weights and measures They are the most formal and solemn assurances of which the Empire is capable, and bind the whole Empire, because they engage the honour of the Empire The British Empire is an edifice held together by such ties of honour. It has no written constitution; it remains united because we honour our word, and the religious aspect of Indian Kingship adds the sacred element of implicit faith in the Queen's words, repeated by Her successors, which is the corollary of the Princes' devotion and loyalty to the person of the occupant of the British Throne.

Those pronouncements may be regarded also from a legal angle. They are thus seen to have two characteristics: (*a*) The admission that the relationship is regulated by law and that the Princes have rights: (*b*) Assurances that the Crown, that is the supreme British Government. will never in future attempt to annex or take territory or rights from the Princes, and that nothing will be done within their sovereign sphere without their consent, either already given by the engagement of paramountcy, or special treaty provision, or to be asked for and obtained in future, as the condition precedent to any interference or control by the Crown.

Then there is this sentence· "In a few cases States have been annexed and wholly merged in British India, and then re-created by

the prerogative act of the Crown In such cases the Crown is free to grant what powers of sovereignty it chooses, and the sovereignty of the Ruler to whom rendition is made is limited and defined by the conditions of the grant." I want to add here this note. Without actual annexation, the Government of India in certain cases have imposed on a State the status of restricted sovereignty. This has been done as an act of state, confessedly resting upon superior force, because of either disloyalty or prolonged disorder, or other similar reason, the Government conceived itself entitled to dispose of the State as it thought fit. Such conditions are, of course, equivalent to annexation, and in respect of the powers then conferred on the Ruler, the Crown is as much the grantor as if the territory had been actually annexed, but, since 1858, this has not occurred Those are the chief points on that

At the end of the second sub-paragraph of paragraph 5 (d) (I), after the words "because it represents the consensus of opinion amongst free and independent nations" it is worth noting "See Mr Loder's Opinion in the case of the *Lotus*, Permanent Court of International Justice, *Recueil*, Series 'A' No 10, *page 34*" Then later in paragraph 5 (d) (I) the Opinion says "We recognise that there are in other fields of human affairs occasions when usage as such may acquire the binding force of law, but they are, in our opinion, irrelevant to the matters under consideration" I should like to add that it may be given that force or creative character by Statute, as, for instance, by the Prescription Acts, and I think other illustrations could be quoted

Then in paragraph 5 (d) (II), in dealing with sufferance as a source of jurisdiction, I should like to submit this observation The word "sufferance" is appropriate rather to the assumption of jurisdiction by a civilised power in an ungoverned country, as, for instance, some of our African Protectorates If I remember rightly, sufferance was actually claimed to be the basis of our jurisdiction in Zanzibar, until the position was converted into a treaty.

On the subject of paramountcy, paragraph 6 (b), where we point out the contents of the agreement of paramountcy and the assignment to the Crown of the whole conduct of foreign relationships, it is worthy of notice that, in the Statute, 39 and 40 Victoria, Chapter 46, cited by Sir Arthur Wilson in the Judgment of the Privy Council, Hemchand's Case, 8 Bombay Law Reporter, 198, there is a provision: "The Indian States in alliance with the Crown have no connection, *engagement, or communication with foreign Powers*"

Then one observation about the word "feudatories" used in King Edward VII's Coronation message, quoted in the Appendix. I do not know, (probably Sir Harcourt Butler does know), but I cannot help thinking that that word "feudatories" was Lord Curzon's word.

Chairman I have no information upon the point

Sir Leslie Scott Upon it I want to hinge this submission that the word "feudatory" has often been used loosely, and, in my submission, misused, as applying to the major Princes of India If used as a metaphor from the days of chivalry, there is no objection If it is used as connecting anything more, it is wrong They are Rulers in alliance, and the use of the word "feudatory" is wrong

I now have to deal with the third question, and I propose to deal with it very shortly. The third question is as to the means for a more satisfactory adjustment of the financial and economic relations between British India and the States You will remember that I informed you, at the commencement of the evidence on the 15th October, that the Princes had come to the conclusion that the adjustment of machinery in the future would have to be achieved by negotiation between them and the Crown, and that, consequently, it was not convenient, or perhaps even courteous, to the Crown, to put forward any details of proposals at this stage. And I am sure the Committee will not for a moment suspect their Highnesses of any want of courtesy to the Committee in taking that decision But you are entitled to know, and the Princes are most anxious that you should know, the general lines upon which they think that probably it will be possible to come to some reasonable arrangement in the future, and I can put it to you shortly because The European Association of India have, in their Memorandum submitted to the Indian Statutory Commission, incorporated proposals in regard to the Indian States which the Standing Committee are content to accept as an indication of the rough lines upon which they think machinery should hereafter be constituted. I have handed to your Secretary a copy of a document which you have probably already seen, that Memorandum, and if you will kindly look at the Index at the beginning you will there see that the Indian States are considered expressly in some paragraphs, other paragraphs are relevant to the States, even though they are not actually mentioning them

Paragraphs 11, 12, 27, 28, 32 (a), 32 (g), 35, 36, 37, 38 and 39 expressly mention States, and, of course, the other sub-paragraphs of paragraph 32 have an indirect bearing.

Paragraphs 15, 26, and the whole of Section 5 are relevant but do not expressly mention them.

If you will look at those paragraphs, Sir, paragraph 35 to the end of the Section, you will see that the subject is there dealt with. The first passage I desire to quote is in paragraph 11:

"The Association is unable to envisage any Reform in the political organisation of India that leaves unsettled the political status of the Indian States and their relationship with British India, and at a later stage in this memorandum will put forward definite proposals as to the solution of this problem"

Paragraph 35: "Whilst on the question of Central subjects the Association would also recommend the delegation of such powers to the Provinces as to enable each Province individually to deal with social reform The moral and material progress of the peoples is largely dependent on the ability to modify existing and ancient customs to suit the requirements of modern India To ensure an equal advance of public opinion throughout India is a difficult task likely to delay social reforms. Already certain Indian States, possessing as they do the necessary authority, have introduced social reforms, and if Provinces were similarly empowered to undertake social legislation, advance would be more rapid and the consideration of questions of social reform might assist in the healthy growth of parties in the Provincial Legislatures."

Paragraph 36: "The most difficult portion of the problem from the economic point of view is, however, the status of the Indian States. The Association is convinced that some advance should be made towards developing a Federation of Indian States having a definite connecting link with the Government of British India The Association is mindful of the existing treaties with the Indian States. So long as these treaties exist, carrying with them responsibilities for the external and internal security of the Indian States, the Crown cannot delegate those responsibilities to the British India Government or any other, particularly one responsible to electorates in British India alone It is obvious, however, that the Ruling Princes are alive to the political development proceeding in British India and recognize that moral and economic factors are compelling them to some change in existing relations. They desire, and justly, an adequate voice in All-India subjects, materially affecting the welfare of the States and their peoples, and some of them have shown courage and statesmanship in the reforms which they have voluntarily introduced within their States. The Association welcomes this move in the direction of a united India, though it recognizes that participation in any such reform which may be introduced must be entirely voluntary. It has given much thought to the problem and would place on record in some detail a suggestion which it believes will create tendencies towards final federation."

Paragraph 37: "It will not be possible at the moment to take more than an initial step towards the ultimate and distant goal of an All-India Government, consisting of a federation of Indian States working harmoniously with British India, through legislatures which would draw their representatives both from British India and the Indian States."

Paragraph 38 "The first step towards this goal would appear to be the building up of a federation of the Indian States working through the Chamber of Princes and controlled by a Viceroy in States Council, corresponding to some extent to the Viceroy's Executive Council in British India, to which the participating Indian States would delegate certain definite powers In questions affecting both the Indian States and British India the Indian States Council and the Executive Council of British India might meet as a Union Council under the Viceroy If the Indian States are included in the future constitution it might be found desirable to establish a Supreme Court to the jurisdiction of which the Indian States would become amenable"

Paragraph 39: "The Association wishes to emphasize the economic aspect of the problem which, in its opinion, necessitates the fullest examination of India's political organisation and an alteration in the existing constitution which will create a tendency towards the ultimate development of an All-India Government in which both the Indian States and British India will have their share"

I do not feel, Sir, that I quite appreciate the full meaning of Paragraph 37 with its reference to future legislatures, but broadly speaking the federation on those lines is, as I think you know, the kind of future machinery which, in the belief of the States, would assist to solve the problem of co-operation between the States and British India The aspects of the position are, as is indicated here, the States should have a real voice, that their consent should be given through their own body to which they delegate powers The

advisory position of the Chamber of Princes could no doubt be greatly developed to the advantage of both States and British India and of Great Britain.

It is obvious from the remarks which I have already made, that in our submission, Great Britain must remain an active participant in Indian Government, and responsible solely and directly for the carrying out of all the contractual obligations owed to the States. It is necessarily, therefore, in a position where it can act as arbiter to settle disputes or differences of view between the States and British India The States recognize that in point of population they occupy a minor position in India, but they are entitled to their appropriate voice Things cannot be done which are contrary to their rights without their consent. If their co-operation is asked for they are willing to give it, but it must be through machinery of which they can approve. The history of the last century has shown the extreme desirability of a supreme court, as is indicated in this Memorandum of the European Association, which could solve all the disputes between the States and British India or the Crown, which to-day are solved by the Crown being a judge in its own case, or in most cases, to deal with actual facts, in which the Government of India is a judge in its own case. There is something abhorrent about that position to the sense of British justice and it ought to be checked.

I say nothing as to what form the Court should take, what functions the Privy Council should have in the matter; those will be matters for discussion in association with the Crown, but that the position and rights of the Princes, and their goodwill to India, and their loyalty to the Empire, cannot be adequately recognised in the future without some kind of federal machinery, I venture to submit, is obvious from all the circumstances of the case.

Chairman: This scheme postulates a Chamber of Princes or some body of persons who could pass resolutions which should be binding upon the individual States.

Sir Leslie Scott A body, I think, not the Chamber; a small body composed of very few persons, comparable to the Governor-General's Executive Council, of the same type, with executive powers within such limits as may be delegated to it by the States, and that is obviously the point; satisfactory solution will have to be the subject of negotiation. The Chamber might be used as an advisory body for consultation with the States Council, and it no doubt could be used in such a way as to promote the end of co-operation with British India, coupled with giving to the States a sense of security and a feeling that their position was going to be duly safeguarded. It is on those sort of broad lines that their opinion is tending and upon which they hope that the establishment of their legal position in accordance with the Opinion of July last and the submissions that I have made to you will facilitate negotiation

Chairman But it would be a condition precedent to any such federal form of constitution that the individual States would surrender themselves so far to some body that they would accept the decision of that body?

Sir Leslie Scott· I should like to say "Yes" with the alteration of a word—not that I do not myself understand the meaning of your

word, but to prevent possible misunderstanding with others. Would you substitute "delegate" for "surrender"? Then I should agree, and I think that is what you mean, Sir

Chairman Yes, I accept the word "delegate"

Sir Leslie Scott · I knew that was what was in your mind, and of course the answer to that is that that is *sine qua non*, it is of the very essence of the scheme, the scheme essentially is that you make a federation of the States, who delegate to a Council certain powers for certain limited purposes, and within certain safeguarding provisions, and the Princes believe that that can be done successfully They *are most anxious—and I desire to put this on record—to play their* due part in the development of India as a whole and are willing to negotiate on those broad lines.

So with those remarks there remain only two individual points

CERTAIN POINTS OF EVIDENCE.

You may remember, Sir, that I said I would deal with the supplementary evidence from the State of Mudhol Having regard to time to-day it is not possible, but I feel convinced that you will be so good as to look at that evidence, which is of interest and importance.

The introduction to the evidence in its economic part deals with many of the questions that you have to deal with under the second head of your Terms of Reference That is put together there with such care that I did not think it right to paint the lily, but I know you will read that with very great care, I have put of my best personally into it, as Counsel, as well as Colonel Haksar, and you have my views as well as his which I desire to put before you in that portion.

May I ask a question of the Committee, Sir? I understand that the Committee gave a ruling some time back that, if I may speak an Irishism, States which are to-day said not to be States, rightly or wrongly, have no *locus standi* before you, to use the technical description The Taluka of Mangrol applied to be heard before you, and I think was told that, not being recognised to-day as a State, whether it was entitled to be so recognised or not, it could not come before you as a State I understand that Ichalkaranji and Panth Piploda have also applied for leave to put their case before you. But I understand that you have taken the view that you, having no remedial powers, cannot say that a taluka or estate is a State if it is not so recognised to-day as being a State, and consequently are not prepared to hear their cases.

Chairman Yes, that is so

Sir Leslie Scott · I ask because to my knowledge there is interesting matter from the Taluka of Mangrol, but I understood that was the decision

Chairman · Yes

Sir Leslie Scott Sirs, I have only to thank you for your attention to me

Chairman That concludes your case, Sir Leslie, does it?

Sir Leslie Scott Yes.

Chairman: On behalf of the Committee I wish to thank you for presenting your case before us and I assure you we shall study your speech and the introduction and all the papers with the very greatest care.

Sir Leslie Scott: His Highness of Patiala would like to make a small addition on behalf of the Princes personally, from the Princes' own angle.

His Highness The Maharaja of Patiala: Sir Harcourt Butler, Members of the Indian States Committee, the protracted enquiry which has occupied you so long is now approaching its concluding stages; but before it terminates I am anxious to take advantage of your indulgence in order to give expression to some of the feelings which I know well are common to me and to my Brother Princes. I will not detain you very long

I am quite sure that from the commencement of your labours, Mr. Chairman, you and your colleagues shared with the Princes an anxiety to obtain as much information as possible bearing upon the problems which stand to be investigated. We acknowledge the courtesy with which you have afforded us the opportunity of collecting evidence in our endeavours to put forward a comprehensive case. We further acknowledge the patience which you have displayed in arranging for these protracted Sessions We hope that we have shown that on our side neither energy nor expense have been spared in our endeavours to provide you with all the assistance in our power. But there was one factor over which neither you nor we could exercise complete control; and that is the factor of time You, Sir Harcourt, possess a profound knowledge of the essential elements of the problems which you and your colleagues are investigating, but I may perhaps venture to question whether, at the commencement of this enquiry, you had formed an estimate any more accurate than that which we ourselves had formed, as to the time really requisite for the preparation of our case. We Princes have done our best, our Counsel, our Special Organisation and our Ministers have laboured devotedly. But the fact remains that the time at your disposal and at ours has been all too short to enable us to do even the barest justice to the case which we desire to put before you This shortness of time has been responsible for certain defects, to which I would briefly draw your attention. In the first place, it has handicapped the Standing Committee of the Chamber of Princes in its endeavours to secure complete unanimity among the Members of the Chamber. Had more time been available, there can be little doubt but that the States who have authorised us to speak for them would be even more numerous than they are to-day. By way of illustration I may mention the fact that even since your Committee commenced its Sessions in London, four more States have joined us—Cooch Behar, Bahawalpur, Dewas Junior, and Tehri Garhwal, and I think there can be no reasonable doubt that, had there been sufficient opportunity for me and my colleagues of the Standing Committee to explain more fully to our Brother Princes the aims and objects of our activities, we should have been able to appear before you with the declaration that the Princes of India spoke with a unanimous voice If this consequence of the shortage of time has operated to handicap us, there is a further consequence which, if I may say so, has operated

to handicap the Committee also And that is the visible marks of haste which are so apparent in the evidence which we have placed before you. I do not here refer merely to certain minor misprints and misplacements in the printed volumes In my opinion, considering the short time at their disposal, the printers have worked something very like a miracle, and I do not think that the small deficiencies are likely seriously to impede the work of the Committee I refer to more serious considerations. In the first place, the quantity of the Evidence which we have placed before you would have been largely augmented had it been possible to spend a larger amount of time in its collection. It may perhaps surprise the Committee to learn that almost one-fourth of the States who are associated with the Standing Committee have found themselves unable to submit evidence in the detailed form upon which our Counsel has rightly insisted This, of course, does not mean that these twenty States have got no cases In reality, they possess many important ones But in the time at their disposal, some of the States whose archives are not systematically arranged, have found it impossible to search out all the documents necessary for the proper establishment of the contentions they desire to put forward. Not only has the quantity of the evidence thus been diminished by the shortage of time, but in some respects its quality has also been affected Our Counsel has already explained to you that the selection of evidence presented to you is merely representative The task of selection would I think have been greatly facilitated had all the States which have joined us been able to submit their cases in the form which Counsel required For we should then have been able to select as illustrations under every head a variety of instances fully illustrative of all the hardships from which the States are now suffering Under many of the heads this has been done, but it will not have escaped the notice of the Committee that certain of the illustrations are of a kind which may appear, on superficial examination, somewhat trivial I and my Brother Princes feel the utmost confidence that the particular nature of these cases will not cause the Committee to overlook the fact that they frequently represent small examples of the violation of great principles But it would have been more satisfactory, both to the Committee and to ourselves, if examples of these violations could have been in every case important of themselves instead of merely important from their implication. There is no doubt that we could have put forward under a variety of heads better and more striking examples, had we been in a position to devote a longer time to the task of collection Finally, *having collected the Evidence in an imperfect manner*, we were also compelled to deal with it in a fashion far more summary than its importance demanded I have been interested to learn that if we had entrusted the preparation of the presentation of our Evidence to one of the most prominent firms of London solicitors they would have required nearly twelve months, and a special staff, in order to deal satisfactorily with these four volumes which have been put into your hands Had time been available, we should not have dreamed of asking you to consider the evidence in this comparatively undigested form Our Counsel would have been able to reduce the case to a series of general propositions, illustrated by particular examples Thus the value of the evidence would have been easier to estimate, and its total effect would have been more obvious. I fear,

therefore, that we have to convey to you, Sir Harcourt, and to your colleagues, our regretful apologies for the manner in which we have had, quite involuntarily, to add to your already burdensome labours. But I trust I have said enough for you to realise that we have done our best despite many handicaps. Not the least of these handicaps, to be entirely frank, is the long-cherished belief of the States that their rights were perfectly safe and that in the face of the frequent and authoritative declarations made by the highest personages regarding the sanctity of the Treaties, they could rest secure. Only recently has it been borne in upon the States that, if the Crown is to protect them in the enjoyment of their rights and their privileges, they must be in a position to bring to its notice, clearly and precisely, the exact content of these rights The result has been that, for the last many years, the Indian States have never even contemplated that a time might come when it would be necessary, in the interests of the Crown as well as of themselves, that they should put forward a reasoned case as against some of the actions of the Government of India. Such a supposition did not enter into their calculations Their archives have never been arranged in such fashion as to facilitate it. Hence, when the necessity arose, it found the States almost entirely unprepared

May I explain very briefly why we felt the need for the appointment of the present Committee? Our relationship with the Paramount Power goes back for a century and a quarter, and for roughly half that period, so far as my knowledge goes, it was never forgotten that the relationship of the States with the Crown was diplomatic, and that the rights and obligations of both parties, being enshrined in solemn documents, were entitled to the utmost respect. Official correspondence was still carried on in the language of the Moghul Court, courtesies were exchanged strictly in accordance with tradition, and every respect was shown to the position of the Princes as parties in contractual relations with the British Where it became necessary, in pursuit of either political or humanitarian considerations, to enlist the co-operation of the States in matters affecting their own internal affairs, the process employed was invariably diplomatic in form. The abolition of slavery, suttee, and infanticide was obtained in such fashion and no other.

But when the British became paramount over the whole of India, their representatives turned naturally to the development of that portion of the country for whose administration they were directly responsible Their desire to do their best for the great charge committed to them naturally led them to set a high value upon the virtues of efficiency and the methods of standardisation They began to conceive far-reaching policies for the benefit of British India, and the application of these policies came in time to embrace even the territories for whose administration Britain was not responsible. But almost up to the last decade of the nineteenth century, though pressure was unquestionably exerted upon the States in order to obtain from them agreements whose object was the enhancement of British Indian revenues, the arrangements in connection with salt, opium, railways and the like, were still concluded, in the letter, but not in the spirit, with the consent of the States

The almost irresistible process which was making towards economic and even political unity throughout India, regardless of the privileged

position in which the States stood towards the Paramount Power, was reinforced by internal developments in British India. The spread of Western education, which Britain to her credit has always encouraged, led to a demand for the admission of British Indians to the Councils of their Government In larger and larger measure the British principle of associating the governed with the Government has been applied, with the natural result that the interests of British India and of its people came to bulk more and more largely in the estimation of the Government of India. If we consider the length of the period which has elapsed since the Mutiny, and the powerful operation of these forces, economic and political, which I have briefly mentioned, we shall not be surprised at the development of a position in which the Indian States find themselves to day. For our own part, we are convinced that this position accords ill either with the Treaty rights of the States or with those interests which the British power has from time to time pledged itself to respect. The economic interests of the States, and the prosperity of the States' peoples, have unquestionably suffered, and we hope that we have brought to the notice of the Committee sufficient evidence to show upon how solid a basis our contentions rest I could, if necessary, quote the words of British Officials of the highest rank in further support of the States' contention that the present position is unsatisfactory and calls for redress and for amendment.

We ourselves have for long been only too clearly aware of this We knew we were in the position of Allies. We had no doubt that our Treaty rights were being infringed in a variety of directions. But until we took the unprecedented step of obtaining the best legal advice available, as we are not lawyers, we were working to some extent in the dark The legal position has now been fully cleared up, for the first time, I believe, since the Indian States came into relations with Britain. The names of the Counsel who have subscribed to the Legal Opinion we have placed in your hands, carry an authority which cannot be questioned I am informed that in accordance with the great tradition of the English Bar the Opinion is a wholly impartial one that our leading Counsel, like his distinguished colleagues, was only concerned in the Opinion to elucidate the legal position, whether it made for us or against us The result you know What we now seek is an official and effective recognition of the true position, that consent is the basis of our relationship with the Crown Once this has been admitted, we Princes are prepared to negotiate with His Majesty's Government as to the machinery which will be necessary to ensure the preservation of our own rights as well as to promote the progress and prosperity of India as a whole You will find us ready to co-operate with you in every reasonable way But we do ask you to recognise the essential basis of our rights

There is, however, one observation upon which I should like to lay great emphasis I want to dissipate the impression that the Princes are plaintiffs in a case where the Government of India are defendants This is not so The position, as I see it, is that the Indian States are doing their best to assist the Crown to establish a position which shall be satisfactory to both parties If I may venture to say so, we are all sitting together, as colleagues and our one aim is to see that the true spirit of the relationship between the Indian States and

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the Paramount Power is in the first place elucidated, and in the second place respected. If we have placed before you instances which seem to us to argue disregard of the States' rights and interests, it is only because we who wear the shoe may be expected to judge more particularly as to where that shoe pinches. We are not treating you as a Criminal Court, and arraigning the Government of India before you; we are only doing our best to place before you the manner in which, as it seems to us, the present political system fails to secure the due discharge of those mutual rights and obligations which together constitute the bond between the States and the Crown. We feel that, unless we elaborate before you both the variety and the extent of those encroachments upon the rights of the States which the existing system has made possible, you as a Committee would scarcely be in a position to judge as to the extent to which that system requires rectification

I should like, if you will allow me, to speak with the utmost frankness and to express, as perhaps only an Indian Prince can, some of the ways in which I and my colleagues conceive that the present system does lasting injury to the relationship, of which we are so proud, between ourselves and the Crown. The first point to which I should like to draw the attention of you, Sir Harcourt, and of your colleagues, is the peculiar position in which those servants of the Crown, whose function was originally that of diplomatic agents, now find themselves placed The Political Officer accredited to the Court of an Indian State is invested with an artificial authority which can be used, and is occasionally used, in a fashion which must necessarily reduce, for the subjects of the State, the effectiveness of the Ruler and of his administration. The Political Officer has come to be regarded, not merely as a representative for diplomatic purposes of the Paramount Power, but as *constituting in himself the embodiment of* paramountcy. The use which he makes of his position is, in general, a matter of the personal equation. The Indian Princes acknowledge, and gladly acknowledge, that, in the person of the Political Officers accredited to them, they have on occasion found their best, their wisest, and their most sympathetic friends. But, at the same time, we cannot ignore the fact that the position in which the Political Officer is placed enables him at any time to interpose his authority between the Ruler of a State and that Ruler's subjects Where such interposition takes place, the results are disastrous If once it is recognised that the Political Officer is willing to receive and to countenance complaints against the Ruler and his administration, then, immediately, such an Officer becomes the refuge of all who are discontented, and all who desire to evade the responsibilities which they owe to the State. The Ruler and his administration are regarded as under the orders of the Political Officer. Not only does their prestige suffer, but their sense of responsibility is gravely affected, and their power for good unduly lowered and diminished

There is another side to this question If the authority of the Political Officer is interposed between that of the Ruler and the Ruler's subjects, there is an inevitable tendency for the Ruler to conclude that his security and his reputation depend more directly upon the goodwill of the Political Officer than upon the happiness and the contentment of the people of the State Such a state of affairs is disastrous According to the ideas of Indian Kingship, Ruler and people must ever

remain face to face; so that, while the subjects do not evade their obligations to the Ruler, the Ruler is equally unable to escape the duties which he owes to his subjects Where an alien authority, in the shape of a Political Officer, intrudes itself between Ruler and ruled, the sense of responsibility of the Rulers is naturally weakened, the obligations owed by the ruled are transferred to an alien power.

The Princes of India frankly recognise the right of the Crown under the Treaty relationship to assert its authority for the correction of gross injustice or flagrant misrule But we are clearly of the opinion that such an obligation does not confer a right upon the agents of the Government of India to interfere at their own discretion with the internal administrations of the States. We realise that the British Officer, when accredited to the Court of an Indian State, may be expected to display a zeal for the introduction of administrative methods to which his own training has accustomed him. We realise that he may be expected to believe that the standards of administration appropriate for British India, are equally applicable to the Indian States, whatever may be their individual stages of development But we most earnestly desire to suggest that these natural tendencies should be restrained by the consideration that Western institutions, Western standards, and Western customs, are not necessarily suitable to policies where Ruler and ruled who are of one race, and who thoroughly understand one another, are still closely bound together by the ties of traditional sentiment In this respect, we frankly look for help to the Crown We hope that it will bring to the notice of its Political Officers that the ancient customs and the long-standing traditions of the Indian States have an intrinsic value of their own, and a part to play even in the world of to-day, that they do not depend for their survival upon the half contemptuous toleration of the British Government. We would also earnestly ask that same Government, in the interests of the relations which exist between the Indian States and the Paramount Power, to discard some of those notions of prestige which have already wrought such grave harm We Princes of India are only too ready to co-operate with the Government of British India in the pursuit of aims which will redound to the advantage of the country as a whole We would only ask that our co-operation should be invited, that the reasons underlying Government policy should be explained to us, and that, where action on our part is desired, we should be satisfied of the necessity of the measure in question I would ask the Committee to believe that it is in no spirit of fault-finding that I say that the present conditions are far different from those which I have indicated Too often, when we Princes have to transact business with the representatives of the Government of India, we feel we are meeting men who are rigidly bound by certain instructions from which they cannot depart We feel that their minds are already made up, that the issues under discussion are prejudged, and that the one aim and object is to induce us, by any possible manner of means, to acquiesce in views which have already been formulated I would respectfully maintain that, in such circumstances as these, justice and equity cannot flourish If we are to co-operate wholeheartedly with the Government of India and with its Officers, we must do so in a spirit of give and take The intercourse between us must be of a kind which exists between persons who desire

to reach an equitable decision after frank and free discussion. We cannot be expected to open our hearts in the presence of Officials who treat their own opinions and their own judgments as the epitome of wisdom, and who regard honest differences from their point of view as partaking of the nature of personal affronts. We earnestly hope that as the result of the representations we are making before the Committee, the Paramount Power will not only admit, but will impress upon its representatives, the position which we regard as fundamental, namely, that the States have a perfect right, outside the limits of the paramountcy agreement, to decline propositions of which they do not approve, and that it is not correct for every servant of the Government of India to look upon himself as the representative of a power which has the right, as well as the physical force, to impose its will upon the States in every particular.

We Indian Princes feel that if we are to discharge our obligations to the Crown, we must be placed in a position in which we can do our duty. We feel that, through the operation of the existing Political system, we have lost initiative and a sense of responsibility. Whatever may have been the ideas underlying that system, its practical effect has been to keep us in leading strings. But we feel that unless we are allowed to buy our experience, no matter at what cost, unless we are brought face to face with the consequences of our own actions so far as our subjects are concerned, we can never fully rise to the responsibilities of the position in which we have been placed by Providence.

In appealing to a Committee composed of Englishmen, I think, it is hardly necessary for me to justify a desire, which I know is shared by my Brother Princes, that, in the sphere of sovereignty which remains to us, however great or small that may be, we should in truth be masters. But such an aspiration is all too frequently misunderstood. When some of us stand firm upon our rights as we conceive them to be when we attempt, as loyal friends and allies of the Crown, to establish firmly our authority within our States, we are forthwith accused of cherishing ridiculous aspirations towards complete independence, and of manifesting a spirit of hostility to Britain. No assurances of mine, I feel confident, are necessary to demonstrate to such a Committee as this the irresponsible, the wholly untrue, character of these suggestions. But the mere fact that they can be made, and are made, in the case of those of us who take our responsibilities, both to the Paramount Power and to our own people most seriously, is surely an indication that something is wrong. What that something is, we look to the Committee to discover. But, for our own part, we believe that it arises primarily from the fact that no definite and separate machinery has even been set up to preserve and safeguard the spirit of the relationship between the Indian States and the Crown. The Political Department, whose services to the States we all of us frankly recognise, is, after all, but one branch of the Government of India. And if the Government of India is committed by its position to take a predominantly British Indian view, then the Political Department, as a part of that Government, has to act under the orders which it receives. If the Government of India, in the discharge of its responsibilities towards British India, concentrates its attention primarily upon the development of British Indian resources, and upon schemes

for the progress of British India, it is only natural that the rights of the States and of their subjects should fall into a secondary place. Inevitably, in such conditions as these, the interests of the States are subordinated to those of British India, and the Political Department, despite the best efforts of many admirable officers, tends to become merely the instrument by which this subordination is enforced.

I desire to make plain, once and for all, the attitude of myself and my colleagues towards the whole of this vital enquiry We are profoundly loyal to the Person of His Majesty the King Emperor, we are equally loyal to the obligations imposed upon us by our agreements with the Paramount Power. We admit the rights which that Power is entitled to claim under the Agreements, we look to it to see that our own rights are equally secure. We have not the slightest wish to go outside the Empire. We only desire that the true spirit of the relationship between ourselves and Britain shall be respected We have nothing but the friendliest feelings towards that Department of the Government of India which is primarily concerned with the transaction of our day to-day business, we desire only that it should be placed in a position in which it is free to respect, and to mould its conduct in accordance with, the Treaty relations

Incidentally, we have no hostility towards British India, and we do not desire to oppose its aspirations. We recognise that the question of political advance in that part of the country is a matter for settlement between British India and Great Britain But our basic attitude can be summarised in a single sentence We want to maintain our link with Britain. We believe that our relations are and have always been with Britain; and it is to the spirit of these relations that we desire to remain as true in the future as we have done in the past We hope that there is nothing unreasonable in this desire. We feel that we are appealing to a power which has manifested so great a regard for the sanctity of solemn pledges that it entered the greatest war in history in defence of its plighted honour We believe, and firmly believe, that the ties of obligation existing between Great Britain and ourselves are no less sacred than those which exist between Great Britain and Belgium.

May I close upon a note of personal appeal? I would beg of you, Sir Harcourt, and Members of the Indian States Committee, when you are drafting your Report, to remember the manner in which the Indian Princes stood firm by Britain in 1857 and in 1914 As we have stood by you in the past, so we will stand by you in the future We are putting forward no claim, we are raising no contention, which we do not regard as fully justified by agreements which your Monarchs have declared to be sacred and sacrosanct. We trust to you to see that this great opportunity is not lost We have exposed to you, as frankly as we were able, what we regard as being the defects of the existing system by which our relations with the Crown are conducted We have demonstrated to you our difficulties, we have shown you something of our grievances. We believe that wisdom and policy will alike dictate that steps should be taken to confirm and strengthen our *devotion to the King-Emperor* and to the British connection, by vindicating our claim to those privileges which have been guaranteed

to us, and by securing to the people of our States that treatment to which they are, in all equity, entitled.

Finally, I would beg of you to remember that at a time when a large section of politically-minded British India has boycotted the Simon Commission, because the method laid down for the enquiry was not pleasing to it, we Princes have from the very beginning co-operated whole-heartedly with you in an endeavour to clear up the problems referred to you. What the Simon Commission will recommend for British India I do not know. But I respectfully submit, that it would be the part of Statesmanship for Britain to see that those who have co-operated with her, do not fare worse than those who have chosen the path of boycott. I trust it will never be said that the people of British India obtained justice from Britain by boycotting the Simon Commission, while the Princes, people and States of Indian India were penalised, were disappointed of their rights, and were sent empty away, while they co-operated, to the utmost of their capacity, in the work of the Indian States Committee.

Chairman: Your Highness, on behalf of the Committee I desire to thank you for your eloquent address and for the kindly references to ourselves. We fully realise the difficulties which you have had in presenting your case and we appreciate the completeness and the fullness with which that case has been laid before us. I should like, if I may, to associate myself with Your Highness in paying a tribute to the way in which the printing has been done in putting up this great mass of evidence before us. We deeply appreciate the assistance which the Standing Committee and Your Highnesses generally have given us throughout this Inquiry. I have on many occasions borne ample testimony to the great services which Your Highnesses have rendered to the Empire, and I can assure you that we shall approach the writing of the Report with a most earnest desire to arrive at conclusions which will lead to the stability of the Empire and a not altogether unsatisfactory solution of the very difficult problems that have been presented to us. That concludes the sitting.

NOTES.

1. All references to Aitchison's Treaties relate to the Fourth (1909) Edition.
2. The various headings under which Sir Leslie Scott classified his Evidence are as follows.—

A (a) i	Denial of Prince's Sovereign Rights within his State.
A (a) iia.	Appropriation by Crown of Sovereign Rights over defined areas
A (a) iib	Appropriation by Crown of Sovereign Rights over defined classes of persons
A (a) iii	Extension of British Indian Legislation to territories of States
A (a) iv	Claims to conclude international Agreements automatically binding upon the States
A (a) v.	Intervention between the Ruler and his subjects
A (a) vi	Deposition of Rulers and compulsory modification of their powers
A (a) vii	Minority and other temporary administrations and Acts done by, or at the instance of, the Government of India during such periods
A (a) viii	Control over Successions
A (a) ix.	Derogation from traditional dignity of Rulers
A (a) x	Interference with grant of Titles, etc, by a Prince, and his use of Crests, Uniform, etc
A (a) xi	Inequality of arrangements in connection with extradition
A (a) xii	Refusal to recognise Indian State Officials as Public Servants
A (a) xiii	Restrictions on the employment of non-Indian Officers
A (a) xiv.	Restrictions upon Arms and Ammunition
A (a) xv	Restriction on the acquisition of immovable property in British India
A (a) xvi	Restrictions upon borrowing
A (a) xvii	Other interferences in internal administration
A (a) xix	Disregard of agreements and declarations of intention
A (b).	Economic.
A (b) 1	Salt
A (b) 2	Opium.
A (b) 3	Excise
A (b) 4.	Customs, Transit Duties, etc.
A (b) 6	Posts, Telegraphs and Telephones
A (b) 7	(Railways) Erection of Bulk Oil Installation
A (b) 8	Roads
A (b) 9	Natural resources—restrictions on development
A (b) 10	Irrigation
A (b) 11	Income Tax.
A (b) 12	Mints, Coinage, Exchange, Currency
A (b) 13	Banking
A (b) 14	Materials for buildings and roads
B (a) 2	Inequitable burdens imposed upon, or allowed to be borne by, States.

APPENDIX "N" (see page 130).

A.—Members of the Chamber in their own right.

1. Gwalior.
2. Kashmir.

Rajputana.

3. Banswara.
4. Bharatpur.
5. Bikaner.
6. Dholpur.
7. Jhalawar.
8. Jodhpur.
9. Kishengarh.
10. Kotah.
11. Partabgarh.
12. Tonk.
13. Udaipur.

Central India

14. Ajaigarh.
15. Alirajpur.
16. Baoni.
17. Barwani
18. Bhopal
19. Bijawar
20. Charkhari.
21. Chhatarpur.
22. Datia.
23. Dhar.
24. Indore.
25. Jaora.
26. Jhabua.
27. Khilchipur
28. Maihar.
29. Narsingarh.
30. Orchha
31. Panna.
32. Rewa.
33. Sailana.
34. Samthar.
35. Sitamau.

Bombay

36. Bansda.
37. Dharampur.
38. Idar.
39. Mudhol
40. Sangli.
41. Sawantwadi.
42. Sunth.

Western India.

43. Bhavnagar.
44. Cutch
45. Gondal.
46. Limbdi
47. Nawanagar.
48. Palanpur.
49. Porbandar.
50. Radhanpur.
51. Rajkot
52. Wankaner.

Punjab.

53. Chamba
54. Jind.
55. Kapurthala.
56. Mandi
57. Patiala
58. Sirmoor.
59. Suket.

United Provinces.

60. Benares.

Bengal.

61. Tripura.

Sikkim.

62 Sikkim

Assam

63. Manipur

B.—REPRESENTATIVE MEMBERS

1 Alipura (Central India—30 constituents)
2. Sohawal (Central India)
3 Bhor (Bombay—5 constituents)
4. Jath (Bombay).
5. Surgana (Bombay).
6 Aundh (Bombay).
7. Phaltan (Bombay).
8 Sayla (Bombay—10 constituents)
9 Muli (Bombay)
10 Tharad (Bombay).
11 Jasdan (Bombay—7 constituents).
12. Kotda Sangani (Bombay).
13 Thana-Devli (Bombay)
14 Jamkhandi (Bombay—6 constituents)
15 Kurundwad Senior (Bombay)
16. Miraj Senior (Bombay)
17. Miraj Junior (Bombay)
18 Ramdurg (Bombay)
19 Kalahandi (Bihar and Orissa—4 constituents)
20. Gangpur (Bihar and Orissa—along with Bonai 19 constituents)
21 Mayurbhanj (Bihar and Orissa)
22 Seraikella (Bihar and Orissa)
23 Talchar (Bihar and Orissa)
24 Hindol (Bihar and Orissa)
25 Tigiria (Bihar and Orissa)
26 Baud (Bihar and Orissa)
27 Dhenkanal (Bihar and Orissa)
28 Ranpura (Bihar and Orissa)
29 Kharsawan (Bihar and Orissa)
30 Athmalik (Bihar and Orissa)
31 Korea (Central Provinces—14 constituents)
32 Baghat (Punjab Hill States—17 constituents).
33 Jubbal (Punjab Hill States)
34 Wao
35 Worahi

APPENDIX "O" (see page 130)

A.—MEMBERS OF THE CHAMBER IN THEIR OWN RIGHT

1 Kashmir
2 Gwalior *

Rajputana

3 Alwar
4 Banswara.
5 Bundi
6 Bharatpur
7. Bikaner.
8 Dholpur.
9. Jhalawar.
10 Jodhpur
11 Kishengarh
12 Kotah
13 Partabgarh.
14 Sirohi
15 Tonk
16. Udaipur

Central India.

17 Ajaigarh
18 Alirajpur
19 Baoni
20 Barwani.
21. Bhopal.
22 Bijawar
23. Chhatarpur
24 Charkhari.
25 Datia.
26 Dewas Junior.
27 Dhar
28 Indore.*
29. Jaora.
30 Jhabua.
31. Khilchipur.
32. Maihar.
33 Narsingarh.
34 Orcha.
35 Panna.
36 Rewa.
37. Rajgarh.
38. Sailana.
39 Samthar.
40 Sitamau.

Bombay

41 Bansda.
42. Dharampur.
43. Danta.
44 Idar.
45 Khairpur.
46 Mudhol.
47. Sangli.
48. Sawantwadi.
49. Sunth (Sant).
50. Kolhapur.

Western India.

51 Bhavnagar.
52. Cutch.
53 Gondal.
54 Limbdi
55 Nawanagar.
56 Porbandar.
57. Palanpur.
58 Radhanpur
59 Rajkot.
60 Wankaner.
61. Wadhwan.

Punjab.

62 Chamba.
63 Jind
64 Kapurthala.
65. Mandi
66. Patiala.
67. Sirmoor.
68. Suket.
69 Bahawalpur.

United Provinces

70 Benares

Bengal

71. Cooch Behar.*
72 Tripura.

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* Sir Leslie Scott stated in correspondence that as regards Gwalior and Indore, the [illegible] for [illegible] the [illegible] ider [illegible] rity to the Standing Committee.

A similar qualification was made by Sir Leslie Scott in regard to Cooch Behar.

Sikkim.

73 Sikkim.

Assam

74 Manipur.

B.—REPRESENTATIVE MEMBERS

Alipura with 30 constituents

Khaniadhana	Jigni	Bhaisaundha
Garauli	Gaurihar	Kamta Rajaula
Tori-Fatehpur.	Sohawal	Jobat
Nagod.	Taraon.	Bihat
Kothi.	Piploda	Dhurwai
Paldeo.	Ratanmal	Naigawan Rebai
Muhammadgarh	Beri	Jaso
Mathwar	Bijna	Pahra
Sarila	Lugasi	Kurwai
Banka-pahari.	Baraundha	Kathiwara

Bhor with 5 constituents

Akalkot	Aundh	Jath
Surgana	Phaltan.	

Sayla with 12 constituents

Lakhtar	Bajana	Bhadarwa
Muli	Kadana	Lathi
Pol	Vala	Tharad
Chuda	Patdi	Wao

Jasdan with 7 constituents

Manawadar	Kotda Sangani	Virpur
Malia	Vadia	
Thana-Devli	Jetpur Bilkha	

Jamkhandi with 6 constituents

Miraj Senior.	Miraj Junior	Kurundwad Senior
Savanur	Sandur	Ramdurg

Kalahandi, Gangpur and Bonai with 23 constituents

Patna	Daspalla	Pal Lahara.
Mayurbhanj	Hindol	Kharsawan
Khandpara.	Athgarh	Rairakhol
Nilgiri	Seraikella	Baud
Narsingpur.	Bamra	Talcher
Tigiria	Dhenkanal	Ranpur
Sonpur.	Nayargarh	Baramba
Keonjhar	Athmallik	

Korea with 14 *constituents.*

Bastar	Raigarh.	Khairagarh.
Jashpur	Kawardha.	Udaipur.
Sakti	Changbhakar	Makrai.
Chhuikhadan.	Surguja.	Nandgaon.
Kanker.	Sarangarh.	

Baghat with 17 *constituents.*

Baghal	Darkuti	Nalagarh.
Bija.	Kothar.	Bhajji.
Keonthal.	Mangal	Jubbal.
Mailog	Bashahr.	Kunihar.
Taroch	Dhami	Sangri.
Balsan	Kumharsain.	

APPENDIX "P" (see page 131).

JOINT OPINION of The Right Hon. Sir Leslie F. Scott, K.C., M P, Mr Stuart Bevan, K.C., M.P., Mr. Wilfrid A. Greene, K C, Mr Valentine Holmes and Mr. Donald Somervell.

The terms of reference to the Indian States Committee are as follows:—

(1) to report upon the relationship between the Paramount Power and the States with particular reference to the rights and obligations arising from:—

(*a*) treaties, engagements and sanads; and

(*b*) usage, sufferance and other causes

(2) to enquire into the financial and economic relations between British India and the States and to make any recommendations that the Committee may consider desirable or necessary for their more satisfactory adjustment

It will be observed that the phrase "Paramount Power" is used in Part 1. but as that phrase refers not to the Crown *simpliciter* but to the Crown in possession of certain attributes, we think it will be clearer, if we discuss the relationship of the States with the Crown, and express our opinion separately as to the meaning of "paramountcy" in India.

It may be convenient to state our main conclusions first and then give the reasoning on which they are based.

Main Conclusions.

(1) In the analysis of the relationship between the States and the Crown legal principles must be enunciated and applied.

(2) The Indian States to-day possess all original sovereign powers, except in so far as any have been transferred to the Crown.

(3) Such transfer has been effected by the consent of the States concerned, and in no other way.

(4) The consent of a State to transfer sovereign rights to the Crown is individual to that State, and the actual agreement made by the State must be investigated to see what rights and obligations have been created

(5) Such agreement appears normally in a Treaty or other formal engagement. An agreement to transfer sovereign powers is, however, capable in law of being made informally In such case the onus is on the transferee, viz., the Crown, to prove the agreement

(6) The relationship of the Crown as Paramount Power and the States is one involving mutual rights and obligations It rests upon agreement express or implied with each State and is the same with regard to all the States Paramountcy gives to the Crown definite rights, and imposes upon it definite duties in respect of certain matters and certain matters only, viz : those relating to foreign affairs and external and internal security (a phrase which we employ for brevity and define more fully in paragraph 6 *infra*) It does not confer upon the Crown any authority or discretion to do acts which are not necessary for the exercise of such rights, and the performance of such duties Wherever "paramountcy" is mentioned in this opinion we mean paramountcy in the above sense and no other

(7) The relationship is between the States on the one hand and the British Crown on the other The rights and obligations of the British Crown are of such a nature that they cannot be assigned to or performed by persons who are not under its control

Legal Principles are to be applied

1 The relationship between the Crown and the various Indian States is one of mutual rights and obligations and we have no hesitation in expressing the opinion that it must be ascertained by legal criteria When using the word legal, we are not thinking of law in the limited sense in which it is confined to law laid down by an authority which has power to compel its observance, but are dealing with well recognised legal principles which are applied in ascertaining mutual rights and obligations where no municipal law is applicable That the absence of judicial machinery to enforce rights and obligations does not prevent them from being ascertained by the application of legal principles is well illustrated by reference to International relations There legal principles are applied in arbitrations between independent States, and by the Permanent Court of International Justice, whose Statute provides that the Court shall apply principles of law recognised by all civilised nations

The Indian States were originally independent, each possessed of full sovereignty, and their relationship *inter se* and to the British Power in India was one which an International lawyer would regard as governed by the rules of International Law As the States came into contact with the British, they made various Treaties with the Crown So long as they remained independent of the British power, International Law continued to apply to the relationship And even when they came to transfer to the Crown those sovereign rights which, in the hands of the Crown, constitute paramountcy, International Law still applied to the act of transfer. But from that moment onwards the

relationship between the States and the Crown as Paramount Power ceased to be one of which International Law takes cognizance.

As soon as a Treaty was made between the Crown and a State, the mutual rights and obligations flowing therefrom, and the general nature of the relationship so established could only be ascertained by reference to legal principles This result has not in our opinion been in any way affected either by lapse of time, or by change of circumstances Although the Treaty, in any individual case, may have been modified, or extended by subsequent agreement express or implied, there is no ground for any suggestion that the relationship has passed from the realm of law. The effect of the Treaty itself and the extent if any to which it has been modified or extended fall to be determined by legal considerations.

The view implicit in the preceding observations seems to accord with the terms of reference to the Indian States Committee in which the Secretary of State has directed enquiry We see no ground for applying to the relationship any other than legal criteria, and we are of *opinion that the relationship is legal, importing definite rights and* obligations on both sides

Sovereignty rests in the States except so far as Transferred to the Crown

2 As each State was originally independent, so each remains independent, except to the extent to which any part of the Ruler's sovereignty has been transferred to the Crown. To the extent of such transfer the sovereignty of the State becomes vested in the Crown; whilst all sovereign rights, privileges and dignities not so transferred remain vested in the Ruler of the State In the result the complete sovereignty of the State is divided between the State and the Crown The phrase "Residuary jurisdiction" is sometimes used in official language In our opinion it is the State and not the Crown which has all residuary jurisdiction.

That the sovereignty of the States still exists has been recognised by leading writers on the subject as well as by the pronouncements of the Crown itself.

Thus Lee-Warner bases his definition of a State on its possession of internal sovereignty (page 31). Similar views are expressed by others

That this view is accepted by the Crown can be confirmed by reference to many official documents. As examples we may quote Sanads issued after the Mutiny which refer to "the Governments of the several Princes and Chiefs who now govern their own territories" or the Proclamation of the 19th April, 1875, dealing with Baroda in which the Gaekwar Mulhar Rao is deposed from the "sovereignty of Baroda" and the "sovereignty" of the State is conferred on his successor; or reference in the Montagu-Chelmsford Report to the "independence of the States in matters of internal administration" and to "their internal autonomy."

The Crown has no sovereignty over any State by virtue of the Prerogative or any source other than cession from the Ruler of the State. The idea which is held or seems to be held in some quarters that the Crown possesses sovereign rights not so transferred to it by the State is erroneous

Consent the Sole Method by which Sovereign Powers have been transferred from existing States to the Crown

3 (*a*) Sovereignty is, as between wholly independent States, susceptible of transfer from one holder to another by compulsory annexation or voluntary cession

Where a conqueror after victory in war annexes the conquered State, the loss of sovereignty by the defeated State, and the assumption of sovereignty by the conqueror over the territory so transferred is recognised as valid by International Law The essence of the event is that the conqueror takes, without any act of the vanquished State It is a mere exercise of power by the conqueror.

Annexation may also be enforced without fighting Where a stronger State proclaims its intention to annex the territory and sovereign powers of a weaker State, and in fact does so, then, in International Law, the transfer is as effective as if there had been a conquest

Cession of sovereignty takes place, when one State cedes territory or sovereign rights to another State In cession it is not the act of the transferee, but the consent of the transferor, which effects the transfer. But whenever the transfer is the direct result of an exercise of power, it is in essence a case of annexation, in whatever form the transfer may be expressed—as for instance where the transfer takes the form of a cession, which a defeated State is compelled to execute Indeed whenever the transferor State acts under the compulsion of the stronger transferee State, the transfer made by the transferor is not really the free act of that State, but a mere taking by the transferee State—an annexation in reality though not in form. A real cession, i e , a transfer which is really the act of the transferor, necessarily depends upon the free consent of the transferor, and is essentially a product of a voluntary agreement

3 (*b*) In this section of our Opinion we have up to now been dealing with transfer of territory, or sovereign rights as between independent States, whose relations are subject to the rules of ordinary International Law But our conclusion, that in that field consent is essential to every transfer, which is not in essence a forcible taking by the more powerful State, is even more true of a transfer to the Crown by an Indian State, at any time after it had come into permanent contractual relationship with the Crown by agreeing to the paramountcy of the Crown in return for its protection For where the relationship is thus created by an agreement which, by its express or implied terms, defines the permanent division between the Paramount Power and the Indian Ruler, of the sovereignty over the State territory, any further act of acquisition of sovereign rights, by force or pressure, is excluded by the contract itself In order to acquire any further sovereign rights the Paramount Power must ask for, and obtain the agreement of the protected State To take them by force or pressure would be a direct breach of the contract already made

This position is frankly acknowledged by the Crown We quote in the Appendix some of the chief historical pronouncements which have been made upon the British attitude towards the Indian States

The possibility in law of the Paramount Power repudiating its legal relationship with its dependent State, and using force or pressure to acquire powers over it, in breach of the contractual terms, need not be

considered. The pronouncements, which we have cited, put any conscious attempt of the kind wholly out of the question; and the exercise in fact of force or pressure, whether intended or not, would be a breach of the contract It follows that the relationship of each State to the Crown is, and has been since the time of the first Treaty between the two, purely contractual.

In this context it is to be noted, that, from those States which have never ceased to exist as States, the Crown has never claimed any rights as flowing from conquest or annexation. Where the Crown has intended to annex its action has been unequivocal.

Many Indian States have in the past been conquered and annexed They were then merged in British India, and ceased to exist. Some were annexed by an exercise of superior power without the use of force

In a few cases States have been annexed and wholly merged in British India, and then re-created by the prerogative act of the Crown. In such cases the Crown is free to grant what powers of sovereignty it chooses, and the sovereignty of the Ruler to whom rendition is made, is limited and defined by the conditions of the grant.

But when once a State has been in fact re-created, and a contractual relationship established between it and the Crown, it becomes thenceforth subject to the same considerations as other States in contractual relationship with the Crown, and mutual rights and obligations are determined by the contract, and by that alone

Other Suggested Methods of Transfer.

3 (c) At this point it is convenient to consider the methods alternative to that of consent, which have been suggested by leading jurists and others, for effecting a transfer from a State to the Crown of sovereign rights

Sir William Lee Warner suggests five channels as contributing to the rights or duties of the Indian Princes: (i) the Royal Prerogative; (ii) Acts or Resolutions of Parliament; (iii) the law of nature; (iv) direct agreement between the parties; and (v) usage. With regard to the first two suggested channels or—to use a word which seems to us to be more appropriate—*sources* of rights and duties, we are quite unable to find any legal principle on which it is possible to base a contention that either (i) the Royal Prerogative or (ii) Acts or Resolutions of the British Parliament can give to the Crown any rights against the States or impose any obligations upon them

(i) In the case of the Royal Prerogative, Sir William Lee Warner does not himself explain how it can be effective to bind the Indian States, and we are forced to the conclusion that he was driven to suggest the Royal Prerogative, as a source of rights and duties which he believed to exist, because he could think of no other.

(ii) With regard to Acts of Parliament, Sir William Lee Warner does not appear to assert, that they have the direct effect of creating obligations in the Indian Princes. In so far as he suggests that the Statutes of the British Parliament, which control British subjects, may have an indirect reaction, in fact, on Indian States, with whom British subjects have dealings, or that Acts of Parliament may influence Indian Rulers in a particular direction, we agree with him; but this is a very different thing from his proposition that Acts of Parliament are one of "the

five channels from which flow the duties and obligations of the Indian States.

(iii) His third suggested source, namely, the law of nature, he puts forward as the source of an obligation to refrain from inhuman practices, such as suttee, infanticide or slavery. Whether there be an obligation of the kind, we express no opinion, but if there be, it is a duty due to the civilised world, and we can see no ground for treating it as any special obligation owed to the Crown as such. Indeed the history of the dealings of the Crown with the States, with regard to practices of this kind, apparently shews a recognition by the Crown, that their suppression can only be secured by negotiation and agreement, and not by virtue of any right of interference.

(iv) With regard to the fourth source of obligation suggested by Sir William Lee Warner, namely, direct agreement between the parties, we agree with him as above stated

(v) Sir William does not define what he means by usage, his fifth source if he meant an acquiescence in a practice in such circumstances that an agreement to that practice is to be inferred, we should agree with him, because his fifth source would merely be a particular form of agreement. But Sir William seems to regard usage as a source of obligation even though agreement be absent, and with this view we disagree. We discuss the topic later in our Opinion.

It is to be observed that Sir William Lee Warner is definitely of the view that the Indian States are sovereign States, and it is only in regard to the view, which he takes as to the extent to which and the way in which their sovereignty has been limited, that we part company with him

Hall deals with the question of the limitation on the sovereignty of the States in a footnote (Hall's International Law, 8th Ed, p 28) He suggests an explanation, different from any put forward by Sir William Lee Warner, for the limitation which he believes to exist over and above the limitation imposed by treaty. He says, that, in matters not provided for by treaty, a "residuary jurisdiction is considered to exist, and the Treaties themselves are subject to the reservation that they may be disregarded, when the supreme interests of the Empire are involved, or even when the interests of the subjects of the Native Princes are gravely affected The Treaties really amount to little more than statements of limitation which the Imperial Government, except in very exceptional circumstances, places on its own action" In dealing with this suggestion of a residuary jurisdiction, we experience the same difficulty, that we felt in dealing with Sir William Lee Warner's suggestion of the Royal Prerogative and Acts of Parliament as sources of obligation on the States towards the Crown, namely, that we can conceive no legal justification for inferring the existence of such a residuary jurisdiction. Moreover, Hall does not indicate what reasoning led him to draw the inference But we are clearly of opinion that Hall's view, as expressed in his footnote, is wrong The statement that the Treaties are merely unilateral acts of the Crown, setting a self-imposed limit on its inherent powers over the States, cannot in our opinion be supported The assumption that there are any such inherent powers is devoid of any legal foundation,—indeed his assertions in the footnote go beyond anything which the Crown has ever claimed and are quite inconsistent with the

various formal pronouncements of the Crown, cited in the Appendix to this Opinion. Those pronouncements leave no room for doubt, that the Crown regards its Treaties and Agreements with the Indian States as binding upon it, in as full a manner as any of its Treaties with other sovereign States.

3 (*d*) Before we pass from this subject there is one other matter with which we ought to deal Three of the writers of this Opinion have in an earlier Opinion expressed the view, that paramountcy is a factor limiting the sovereignty of the States. At first sight this view may seem to be incompatible with the opinion, which we have expressed above, that agreement is the sole source of limitation upon the sovereignty of the States, and that obligations of the States towards the Crown are created by agreement and by nothing else But in truth there is no such incompatibility. The Crown is aptly described as the Paramount Power, because the States have *agreed* to cede to it certain important attributes of their sovereignty, and paramountcy is a useful word to describe the rights and obligations of the Crown, which arise out of the agreed cession of those attributes of sovereignty. So understood paramountcy can properly be said to be a "factor limiting the sovereignty of the States" But inasmuch as this is only to say that the agreement of the States to cede attributes of sovereignty is a factor limiting their sovereignty, we think that to introduce the word paramountcy (as we did in our earlier Opinion) in this connection was confusing and apt to mislead It is to be observed that Sir William Lee Warner avoids the use of it and does not include paramountcy in the list of "channels" through which in his view rights and obligations are created He uses paramountcy only to describe the relationship itself, and this use is correct

In our considered view there is a real danger in a loose use of the word In its correct sense paramountcy is not a factor in creating any rights or obligations, but is merely a name for a certain set of rights when vested by consent in another Sovereign State Incorrectly understood it may be treated as creating rights and obligations; and as the word paramountcy itself is not a word of art with a defined meaning, the rights and obligations attributed to it would be undefined If paramountcy were a source of rights, there would be no limit, save the discretion of the Paramount Power, to the interference with the sovereignty of the protected States by the Paramount Power. Indications of this misunderstanding of paramountcy are, we are informed, present in official correspondence with individual States, and this fact gives the point importance We regard the idea that paramountcy, as such, creates any powers at all, as wholly wrong, and the resort to paramountcy, as an unlimited reservoir of discretionary authority over the Indian States, is based upon a radical misconception of what paramountcy means.

The existence of a general discretionary authority, is, moreover, wholly inconsistent with the pronouncements of the Crown to which we have already referred.

3 (*e*) We have given at some length our reasons for our opinion that the sovereignty of the States is limited by agreement, and by nothing else, because we think that this is the most important of the questions which we have to consider.

States to be Considered Separately.

4 The consent to the transfer to the Crown of any sovereign powers is the consent of each individual State given by its sovereign Each State and each occasion of transfer must be considered separately, in order to find out what the agreement was by which the consent of the State was given to any particular cession

This legal conclusion not only is of general importance for the purpose of correcting a too common misconception, that the problem of the States can be disposed of by general propositions applicable to all alike, but introduces a practical difficulty in the writing of this Opinion. There are many individual differences in regard to the terms of the consensual relationships of the several States to the Crown, and the relationship may be constituted by one, or by several agreements In this Opinion we must content ourselves with a statement only of reasons and conclusions of general application

We have noted a common view which seems to us fallacious It is, that the possession by the Crown of certain rights of sovereignty over State A, of itself justifies a legal conclusion, that the Crown has a similar right over a neighbouring State B If we are right in the view which we hold (and we hold it confidently), that the relation between the Crown and A, and between the Crown and B, is in each case regulated by a separate contract or set of contracts, it follows necessarily that the view so expressed is a fallacy But this crude form of the fallacy is less common than the view, that because the Crown enjoys a certain right in regard to many States, a legal conclusion necessarily follows that it possesses the right generally in regard to all States This argument is equally fallacious, because in our view the relationship is one of contract

It should, however, be borne in mind that, if the Crown has a certain right, clearly established and publicly recognised, in regard to a group of States, their example may not improbably influence a neighbouring State to follow suit, and enter into its own individual contract with the Crown, ceding the same kind of rights And the more general and notorious the Crown's possession of the right in question is, the less improbable it will be, that our hypothetical State should consent to be on the same footing without insisting on the execution of a formal instrument Where this happens the Crown, in the result, possesses a right in regard to that State, similar to that, which it already possesses in regard to the others, but the reason is that that State has, by conduct, made its own tacit agreement with the Crown, conferring the same powers. it is not because any such sovereign rights, extending all over India, are inherent in the Crown

In this connection a further reference is necessary to the question of paramountcy, which gives point to the views which we have expressed above The Crown is in relation to all the States the Paramount Power Its position as such is universally recognised, and cannot be disputed From this relationship, which, as we have already pointed out, is itself based on agreement express or implied, certain mutual rights and duties arise What those rights and duties are we discuss later in this Opinion (*infra* paragraph 6) It is sufficient to state here, that they relate to foreign affairs, and the external and

internal security of the States. Paramountcy bears the same meaning in relation to all the States, although the precise manner in which it is put into operation in any given circumstances may differ. In this sense, and in this sense only, can it be said that the position of all the States *vis-à-vis* the Crown is the same. But it is the same not because the Crown has any inherent residuary rights, but because all the States have by agreement ceded paramount rights to the Crown.

Agreement transferring Sovereign Rights normally expressed in Treaty, though capable of being made informally: but onus of proof then on Transferee, i.e., The Crown

5. (*a*) When one State makes an agreement with another State affecting its sovereignty, and thereby does an act of great public importance, it is usual to put the agreement into solemn form, in order to have an unimpeachable record, and to ensure that the signatories are properly accredited to bind their respective States

5 (*b*) It is no doubt true that both in International Law, as between independent States, and in the law applicable to the relations of the Crown and Indian States, it is possible that an agreement effecting a cession of sovereign rights should be made informally by a mere written agreement or correspondence. and even that it should be made by word of mouth at an interview. But if so important a transaction as a cession of sovereign rights is alleged to have been carried out informally, the language used, and the surrounding circumstances must be scrutinised with care, to see, firstly, whether the transaction is really an agreement to transfer sovereign rights, or *something less important, and secondly,* whether the authority of the signatory to bind his State is beyond doubt. That such a transaction should be carried out by a mere oral interview is so unlikely as in itself to raise doubts as to the value of the evidence.

Sanads.

5 (*c*) Its Terms of Reference request the Indian States Committee to report *inter alia* the effect of Sanads upon the relationship of the States to the Paramount Power. The word "sanad" (in older *documents often spelt "sunnad" as it is pronounced), is, as we are* informed, in common use in India, not only for diplomatic instruments of grant, but in ordinary commercial documents, and receipts for money, and means merely "evidence" or "record."

But whatever be the correct signification of the word, we realise that in political parlance it is used generally as indicating a grant, or recognition from the Crown to the Ruler of a State.

But a Sanad by way of grant can have no operative effect, as a grant, if the grantee already has the powers which the Sanad purports to grant. It could only have that effect, if the grantee State had, at some previous date in its history, ceded to the Crown those very powers which, or some of which, the Sanad purports to grant; or if it were a case of a re-creation out of British India of a lapsed State, or a cession to an existing Ruler, of territory which at the date of the Sanad was a part of British India.

Similar considerations apply to a Sanad by way of recognition If the State does not possess the right, the recognition would be construed as a grant, but if it does possess the right, then the Sanad is a mere acknowledgement, or admission by the Crown.

It follows also from the reasoning of this Opinion, that the machinery of a Sanad cannot be used so as to curtail the powers of a Ruler *Ex hypothesi* each particular State possesses, at any given moment, a measure of sovereignty which is definite It will in every case be less than complete sovereignty, because the State must have given up those rights which constitute paramountcy. and it may also, by particular agreements with the Crown, have given up other sovereign rights—either many or few. But after deducting all these cessions from the total of complete sovereignty, it is plain that the State still possesses "x" rights Whatever "x" may be, no part of "x" can be taken away from it against its will—and the Crown cannot do indirectly by a Sanad which purports to define the rights of the State, what it cannot do directly. If the Sanad defines the State's rights as wider than "x" then to the extent of such excess, it may be construed as a grant by the Crown But if the definition is narrower than "x" then to the extent of the restriction, the Sanad will be inoperative The effect of the ordinary Sanad may perhaps be expressed shortly by saying that, leaving aside the exceptional cases where the Crown is making a new cession of sovereign rights, it is nothing more than an act of comity, expressing a formal recognition by the Crown of powers of sovereignty which a State in fact possesses

We need only add that where a Sanad is issued by the Crown in circumstances showing that it represents an agreement with the State concerned, then it is in fact the record of the agreement, and will have the operative effect of an agreement

Usage, Sufferance and other Causes

5—(*d*) (i) *Usage*—The subject of "usage" looms large in discussions of the rights of the Crown over the States, because it is supposed by many to be in itself a source of sovereign rights This idea is erroneous

"Usage" is an ambiguous word It has one sense or one set of attributes in International Law, and another in municipal Law In the former, "usage" means the practice commonly followed by independent nations, and has the binding character of a rule of law, because it represents the consensus of opinion amongst free and independent nations

But the characteristic relationship between nations, which in International Law gives to usage its legal efficacy, is absent from India The Indian States are not in the International sense independent, but protected by the British Crown, they are not free *inter se* to follow what practices of interstatal relations may seem good to them, and thereby to form and exhibit a consensus of opinion on any particular usage, for they have, by the very terms of their basic agreement with the Crown, given up the rights of diplomatic negotiation with, and of war against or pressure upon other Indian States, and have entrusted to the Crown the regulation of their external relations, in return for the

Crown's guarantee that it will maintain in their integrity their constitutional rights, privileges and dignities, their territory and their throne No consensus of opinion as amongst free and independent nations can therefore even begin to take shape, and without it the source of obligation in the International relationship cannot arise

In Municipal Law usage is of itself sterile; it creates neither rights nor obligations It is true that a course of dealing between two parties may be evidence of an agreement to vary some existing contract, *sc.* if it represents a tacit but real agreement between them, that notwithstanding the express terms of that contract they will be bound by the practice which they have been used to follow. In such a case the usage becomes embodied in a fresh, though tacit and unwritten agreement, but it is not the usage itself, it is the agreement underlying it, which gives rise to the new rights

And we should add that the inference that a new agreement has thus been made cannot be lightly drawn There is a vital distinction between acquiescence by A in acts, which involve a departure by B from the existing contract between them, and an agreement by both to a variation of the contract, so that B shall in future have the right to do those acts, whether A acquiesces or not. We use the word "variation" designedly, because the sovereignty of the States remains in them, save in so far as it has been ceded by Treaty or other agreement, and any further diminution of the sovereign rights of the State must constitute a variation of the existing contract so contained in the Treaty or other agreement

We recognize that there are in other fields of human affairs occasions when usage as such may acquire the binding force of law, but they are, in our opinion, irrelevant to the matters under consideration. For instance, we disregard the case of usage as a historical origin of rules of the common law of a country, because the history of British relations with the States leaves no room for the birth and growth of a common law. For analogous reasons we see no relevance in usages such as have led to the growth of the Cabinet system in the unwritten *constitution of Great Britain, or have set Parliamentary* limitations upon the Royal Prerogative

In fine we see no ground upon which there can be imputed to usage between an Indian State and the Crown any different efficacy from that which may be attributed to it by Municipal Law between individuals It follows therefore that *mere* usage cannot vary the Treaties or agreements between the States and the Crown, because of itself it does not create any new right or impose any new obligation Acquiescence in a particular act or a particular series of acts *prima facie* does nothing more than authorise the doing of those particular acts on the particular occasions, when acquiescence was so given It is legally *possible that behind the usage there should in fact be an* agreement dealing with rights, but it is important to realise the limitations, within which it is permissible to infer such an agreement, viz, that no agreement can underlie usage, unless both the contracting parties *intend* to make one

And where an agreement is not made plain by incorporation in a written instrument which can be read and understood, it is important to avoid confusion of thought as to the subject matter. A licence to

the *Government of India* to do a particular act on one or more occasions, which without leave would be an encroachment upon the State's sovereignty, is not an agreement to cede sovereign powers And no inference of an agreement to cede sovereignty can be drawn from one or from many such licences The very fact that a licence is sought shows a recognition by the Crown, that it does not possess the sovereign power to do the act without the consent of the Ruler concerned And it is obvious that a licence of the kind is much more likely to be given informally than a cession of sovereignty It follows therefore that, unless the circumstances viewed as a whole compel the inference that the Parties were intending to make an agreement changing their sovereign relationship, the usage cannot alter their rights And on this question of fact, it should be borne in mind that the Crown and the States have acted in a way which shows that this view has really been taken by both. In the case of many States there exists a whole series of treaties and engagements, regulating many aspects of their relationship by express provision Where express contractual regulation thus extends in many directions over the field of political contact, there remains little room for implying tacit agreement

Similarly where it is sought upon evidence of conduct to found an allegation of "usage" and from that usage to imply an agreement, if the facts disclose protests by the State or any other evidence negativing an intention to make such an agreement, the very basis of the claim is destroyed It is perhaps pertinent to observe that where a political practice is said to amount to a usage followed as between the Crown and a State or States, and that practice began with some act of the Government of India during a minority or other interregnum when the State was under British administration, there is an additional obstacle to the inference from the usage of any intention by the State to make any agreement affecting its sovereignty

It follows from the whole reasoning of this Opinion that the only kind of "usage" in connection with the Indian States, which can even indirectly be a source of sovereign powers, is not a usage common to many States as is the case in International law, but a course of dealing *between a particular State and the Crown of a kind which justifies an* inference of an agreement by that State to the Crown having some new sovereign power over the State We may also add that a "political practice" as such has no binding force, still less have individual precedents, or rulings of the Government of India

When we speak of the possibility of inferring an agreement from usage, we desire to point out that such an agreement can only be inferred as against the particular State which was party to the usage, and cannot extend to bind any other State This caution should be observed even where some other State has been following the identical usage In the case of State A evidence of facts beyond the usage itself may conceivably justify the inference of agreement in the case of State B, such additional evidence may be absent

(ii) *Sufferance*—The word "sufferance" means 'acquiescence", and may either amount to a consent to particular acts, or particular things, or be of such a character, and given in such circumstances as to justify the inference of an agreement From the legal point of view its efficacy is no greater, and no less, than that of usage, and it is in

principle covered by what we have said about usage. If there be any difference, it is rather that the word seems to exclude the idea of two-sided agreement.

5 (e) The ordinary rule that the burden of proof is upon the person who is propounding the existence of an agreement applies, in our view, in the case of States and the Crown, with as much force as it applies to the case of individuals whose relations are governed by municipal law.

Paramountcy.

6. (a) We have already (*supra* paragraph 3 (d)) discussed certain aspects of paramountcy and have expressed the opinion that the relationship is founded upon agreement, express or implied, existing in the case of all the States, and that the mutual rights and duties, to which it gives rise, are the same in the case of all the States In order to ascertain what these mutual rights and duties are it is necessary to consider what are the matters in respect of which there has been a cession of sovereignty on the part of all the States

6. (b) The gist of the agreement constituting paramountcy is, we think, that the State transfers to the Crown the whole conduct of its foreign relations—every other State being foreign for this purpose—and the whole responsibility of defence; the consideration for this cession of sovereignty is an undertaking by the Crown to protect the State and its Ruler against all enemies and dangers external and internal, and to support the Ruler and his lawful successors on the throne. These matters may be conveniently summarised as and are in this Opinion called "Foreign relations and external and internal security." We can find no justification for saying that the rights of the Crown in its capacity as Paramount Power extend beyond these matters The true test of the legality of any claim by the Crown, based on paramountcy, to interfere in the internal sovereignty of a State must we think be found in the answer to the following question: "Is the act which the Crown claims to do, necessary for the purpose of exercising the rights or fulfilling the obligations of the Crown in connection with foreign relations and external and internal security?" If the claim be tested in this way, its legality or otherwise should be readily ascertainable These matters do not fall within the competence of any legal tribunal at present existing; but if they did, such a tribunal when in possession of all the facts would find no insuperable difficulty in deciding the question

We do not propose in this Opinion to discuss particular cases in which a claim by the Paramount Power to interfere with the internal sovereignty of a Ruler would be justified on the principle which we have enunciated. There are certain cases, as for example such misgovernment by the Ruler as would imperil the security of his State, in which the Paramount Power would be clearly entitled to interfere. Such an interference would be necessary for the purpose of exercising the Crown's rights, and fulfilling its obligations towards the State But in this Opinion we are dealing rather with principles than their application; and an enumeration of cases, in which interference would appear to be justifiable, would be out of place It would be equally

out of place for us to try to particularise as to what acts of interference would be proper, in cases where some amount of interference was admittedly justifiable, beyond saying that the extent, manner and duration of the interference must be determined by the purpose defined in our question above.

6.—(c) We have already stated and we repeat that the position of Great Britain as Paramount Power, does not endow it with any general discretionary right to interfere with the internal sovereignty of the States. That in certain matters the element of discretion necessarily enters, is no doubt true. Thus in the case of a national emergency the Crown must temporarily be left with some measure of discretion for the common protection of all. But this is due to the fact that the right and duty of the Crown under the paramountcy agreement to defend the States necessarily involve such a discretionary element. It is a very different thing to say that, in case of a difference arising between the Crown and a State, the Crown by virtue of its paramountcy has a general discretion to overrule the objections of the State. Whether or not it is entitled to do so must depend not upon the discretion of the Crown, but upon the answer to the question of fact set out in the last sub-paragraph.

6.—(d) So far as we can judge, there is no evidence of the States generally agreeing to vest in the Crown any indefinite powers or to confer upon it any unlimited discretion. The existence in certain parts of the field of paramountcy of such a discretionary element as is referred to above, is no ground for presuming an intention to confer a similar discretionary authority in any other fields, such as, for example, commercial or economic matters. Indeed, the history of most States discloses numerous occasions on which the Government of India, in order to get some action adopted within or affecting a State, has sought and obtained the consent of the State to a particular agreement for the purpose, thus showing a recognition by the Crown that its powers are limited and that it cannot dispense with the consent of the State.

6.—(e) Our opinion that the rights and duties arising from paramountcy are uniform throughout India carries with it the resultant view that the Crown, by the *mere fact of its paramountcy*, cannot have greater powers in relation to one State than it has in relation to another. The circumstance that a State has, by express or implied agreement, conferred upon the Crown other specific powers, does not mean that the paramountcy of the Crown has in relation to that State received an extension. Much less can it mean that it has by such an agreement received such an extension in relation to other States, which were not parties to the agreement. The rights so conferred on the Crown arise from the agreement conferring them, and not from the position of the Crown as Paramount Power.

6.—(f) The Crown has, by the mere cession to it of paramountcy, acquired no right to control the independent action of any State in matters lying outside the special field so ceded. Outside the subjects of foreign relations and the external and internal security of the State, each State remains free to guide its actions by considerations of self-interest, and to make what bargain with the Government of India it may choose. There is no legal or constitutional power in the

Government of India, or its officers, nor in the Viceroy or the Political Department, to insist on any agreement being entered into by a State Nor is there any legal basis for a claim that any State is under a duty to co-operate in matters outside the field of paramountcy, with British India. The phrase "subordinate co-operation" which appears in some treaties (*e g*, the Udaipur Treaty of 1818) is concerned, in our opinion, solely with military matters.

It follows from this ascertainment of the legal position, that in a large field of subjects, such as fiscal questions, and the commercial and industrial development of India as a whole, it is within the rights of each State, so far as paramountcy is concerned, and apart from special agreement, to remain inactive, and to abstain from co-operation with British India In many directions the legal gap may have been bridged by particular agreements between individual States and British India; but such agreements may fall short of what is, or may hereafter become, desirable in the common interest of the development of India as a whole, or may need revision It is therefore important to draw attention to the fundamental legal position, that if on political grounds the co-operation of the States is desired, their consent must be obtained. The converse proposition is equally true Outside the matters covered by paramountcy, and in the absence of special agreement, no State is entitled to demand the assistance of the Crown to enforce the co-operation of British India in the performance of those acts, which the States may consider desirable from their point of view

6—(*g*) The rights of any given State being defined by its agreement with the Crown, it follows that the Crown has no power to curtail those rights by any unilateral act.

For the same reason it is impossible for Parliament in Great Britain, by means of legislation, to curtail any rights of the States The Crown cannot break a Treaty with the concurrence of the Lords and Commons any more than without their concurrence

Similarly, the Legislature of British India is equally unable to impose upon the Ruler of a State any obligation, which under its agreements with the State the Crown is not authorized to impose

6—(*h*) It is a necessary consequence of the conclusions expressed above that the relationship of paramountcy involves not merely a cession of sovereignty by each State, but also the undertaking of definite obligations by the Paramount Power towards each State. This aspect of the matter will not be disputed.

The duties, which lie upon the Crown, to ensure the external and internal security of the States, and to keep available whatever armed forces may be necessary for these purposes, are plain.

Similarly, the fact that the States, by recognising the paramountcy of the Crown, have abandoned the right to settle, by force of arms, disputes which may arise between them, clearly imposes upon the Crown the duty either to act itself as an impartial arbiter in such disputes, or to provide some reasonably just and efficient machinery of an impartial kind for their adjustment, and for ensuring compliance with any decision so arrived at.

We should add that such an implied obligation on the Crown must carry with it the corresponding implication of such obligations on each State as may be necessary to make the machinery effective

6 —(i) The question also arises whether there is any obligation upon the Crown analogous to that described by us in the last sub-paragraph in a case where the dispute is between a State and the Government of India We recognise that this question is one of great practical importance to the States We are instructed that a complaint made by a State against the Government is decided by the Government, on a mere written representation, without any of the opportunities afforded by ordinary legal procedure for testing the opposite side's arguments and evidence; that the material on which the decision is based is kept secret, and finally, that on many occasions of dispute, in the view of the Princes and Chiefs, the Government of India is both party and judge in its own case

We have considered this matter, but we are of opinion that, disregarding all political considerations, there is no legal obligation upon the Crown to provide machinery for independent adjudication Each State, when ceding paramountcy, obtained from the Crown by agreement certain undertakings, express or implied, but in our view this was not one, and cannot be implied The States merely relied upon the Crown to carry out its undertakings

6 —(j) Whenever for any reason the Crown is in charge of the administration of a State or in control of any interests or property of a State, its position is, we think, in a true sense a fiduciary one That a trustee must not make a profit out of his trust, that a guardian in his dealings with his ward must act disinterestedly, are legal commonplaces, and afford a reliable analogy to the relationship between the Paramount Power and the States Upon this view the Crown would not be justified in claiming the right as Paramount Power for example to override the rights of a State in the interest of British India Such a claim would, in our view, be indefensible on the ground last mentioned, and also because it would involve the extension of the conception of paramountcy beyond the limits which we have defined above

THE NATURE OF THE RELATIONSHIP

7 —The terms of reference to the Indian States Committee raise another question, to the legal aspect of which we have given careful consideration, namely, the nature of the relationship between the Paramount Power and the States having regard particularly to the parties between whom the mutual rights and obligations subsist and the character of those rights and obligations Our views may be summarised as follows.—

(i)-The mutual rights and obligations created by Treaty and agreement are between the States and British Crown The Paramount Power is the British Crown and no one else, and it is to it that the States have entrusted their foreign relations and external and internal security. It was no accidental or loose use of language, when on the threshold of dealing with the subject of the Indian States, the

Montagu-Chelmsford Report described the relationship as a relationship to the British Crown; for the Treaty relations of the States are with the King in his British or, it may be, in his Imperial capacity, and not with the King in the right of any one of his Dominions. The contract is with the Crown as the head of the Executive Government of the United Kingdom, under the constitutional control of the British Parliament.

(ii) The States cannot dictate to the Crown the particular methods, by which, or servants through whom, the Crown should carry out its obligations The Secretary of State, the Viceroy and the present Government of British India are the servants chosen by the Crown to perform the Crown's obligation to the States So long as those obligations are being fulfilled, and the rights of the States respected, the States have no valid complaint This liberty is necessarily subject to the condition that the agency and machinery, used by the Crown for carrying out its obligations, must not be of such a character, as to make it politically impracticable for the Crown to carry out its obligations in a satisfactory manner.

(iii) The obligations and duties which the parties to the Treaties have undertaken require mutual faith and trust, they demand from the Indian Princes a personal loyalty to the British Crown, and from the British Crown a continuous solicitude for the interests of each State; and they entail a close and constant intercourse between the parties

In municipal law, contracts made in reliance on the personal capacity and characteristics of one party are not assignable by him to any other person We regard the position of the Crown in its contracts with the States as comparable. Not only is the British Crown responsible for the defence and security of the States and the conduct of their foreign relations, but it has undertaken to discharge these duties itself for the States The British Crown has this in common with a corporation that by its nature it must act through individuals; but where it has undertaken obligations and duties, which have been thus entrusted to it by the other contracting party in reliance on its special characteristics and reputation, it must carry out those obligations and duties by persons under its own control, and cannot delegate performance to independent persons, nor assign to others the burden of its obligations or the benefit of its rights. So the British Crown cannot require the Indian States to transfer the loyalty, which they have undertaken to show to the British Crown, to any third party, nor can it, without their consent, hand over to persons who are in law or fact independent of the control of the British Crown, the conduct of the States' foreign relations, nor the maintenance of their external or internal security.

24th July, 1928

(Sd). Leslie Scott.
(Sd). Stuart Bevan.
(Sd) Wilfrid Greene.
(Sd). Valentine Holmes.
(Sd). D. B. Somervell.

APPENDIX.

Extract from Queen Victoria's Proclamation, 1858.

"We hereby announce to the Native Princes of India that all Treaties and Engagements made with them by or under the authority of the Honourable East India Company are by Us accepted and will be scrupulously observed; and We look for the like observance on their part. We desire no extension of Our present Territorial Possessions; and while We will admit no aggression upon Our Dominions or Our rights to be attempted with impunity, We shall sanction no encroachment on those of others. We shall respect the rights, dignity, and honour of Native Princes as Our own, and We desire that they, as well as Our own subjects, should enjoy that prosperity and that social advancement which can only be secured by internal peace and good Government."

Extract from King Edward VII's Coronation Message

"To all My feudatories and subjects throughout India, I renew the assurance of My regard for their liberties, of respect for their dignities and rights, of interest in their advancement, and of devotion to their welfare, which are the supreme aim and object of My rule, and which, under the blessing of Almighty God, will lead to the increasing prosperity of My Indian Empire, and the greater happiness of its people "

Extract from King George V's Speech at the Delhi Coronation Darbar, 1911

"Finally, I rejoice to have this opportunity of renewing in My own person those assurances which have been given you by My revered predecessors of the maintenance of your rights and privileges and of My earnest concern for your welfare, peace, and contentment

May the Divine favour of Providence watch over My people and assist Me in My utmost endeavour to promote their happiness and prosperity

To all present, feudatories and subjects, I tender Our loving greeting "

Extract from King George V's Proclamation, 1919

"I take the occasion again to assure the Princes of India of my determination ever to maintain unimpaired their privileges, rights and dignities "

Extract from King George V's Proclamation, 1921

"In My former Proclamation I repeated the assurance given on many occasions by My Royal predecessors and Myself, of My determination ever to maintain unimpaired the privileges, rights and dignities of the Princes of India The Princes may rest assured that this pledge remains inviolate and inviolable "

APPENDIX "Q" (see page 185)

The Ruling Chiefs in the Central Provinces have often, in the past, been designated "Zemindars" and their possessions called "Zemindari" This fact, together with the use of such terms as Pattas, Kabuliats, settlement, malguzari, in their connection, led Government Officers erroneously to suppose that the real status of the Rajas was not that of Sovereign Rulers. The following facts will serve to explain this error.—

During the Mughal Empire, no prince or chief was recognised as holding his country independently of the Emperor. The Emperor, according to the Mughal Imperial policy, was the sole proprietor of the Indian soil, and the fountain of honour from whom all titles emanated The Ain-i-Akbari is full of the word "Zemindar" which was then used to designate the most powerful Ruling Princes of those days The claim of the Mughal Emperors was literally and disastrously given effect to by the East India Company during the Governor Generalship of Lord Dalhousie who made all-round confiscation on the ground of escheat. The Mughal Emperors nad the East India Company used the terms "Zeminda", "Thakur" and "Chaudhari", etc., for Ruling Chiefs in order to emphasize their subordinate position (Tupper, "Our Indian Protectorate" page 191) The Rulers of Oudh, even when wholly independent of Delhi, were content with the title of "Vizir" (Minister) Asafja, the founder of the Great House of Hyderabad, was, and his successors are still, known as Nizam (Officer charged with a local administration). The East India Company, even after the victory of Plassy had made them virtual masters of Bengal, were anxious to obtain the documentary title of Diwan or Revenue Administrator from the Emperor of Delhi in 1765 "At what precise time" says Mr Field, Judge of the Calcutta High Court, "the Company exchanged the character of subjects for that of Sovereign and obtained for the Crown the rights of Sovereignty is by no means clear There can be no doubt that at the beginning of 1806 the Sovereignty of the Bengal Presidency had been acquired and the British power had become paramount in India" (Field's Regulations of Bengal Code, Introduction, page 17.).

It is clear therefore that the precise status of Ruling Houses in India cannot be determined merely from the documents which those Houses have to show. The great Mahratta Houses of Western India can show no better documentary title than that of being officers under the Peshwa (Aitchison's Treaties, "Bombay.") Indeed the Government of Nagpur under the Bhonsla Raja was itself dependent upon the Peshwa

The British Government up to the middle of the 19th century designated the Ruling Princes of Cooch Behar and Bhavnagar as Zemindars Many Ruling Chiefs in Kathiawar, Mahikantha and Rewakantha and the Southern Mahratta Country are still called Zemindars, Talukdars, Thakurs or Jagirdars. (Aitchison's Treaties relating to these States) The payment of the Ruling Princes of Faridkot, Cooch Behar and Bhavnagar was called "malguzari" or

revenue and the engagement of Benares and such an important Prince as the Nawab of Rampur was called "Kabuliat." (Aitchison, Vol. 1, page 14.).

In the case of the Raja of Benares the word "Zemindari" in their Sanads has been explained to mean "Province" (Defence of Warren Hastings, Indian Courier Extraordinary, Vol 1, page 255) The Rajas who are designated in the Sanads as "Zemindar" were declared not to be Zemindars in the modern sense (Bengal Secret Consultations of 12th June, 1775 Report of Committees of the House of Commons, Vol. V., page 618, Col 2) and their Pattas and Kabuliats were declared to be Treaties (Letter from the Governor-General to the Court of Directors of 21st July, 1775. Report of Committees of House of Commons, Vol. V.)

In the Adoption Sanads dated 20th May, 1865, granted to the Chiefs in the Central Provinces, the latter were addressed as "Raja" in some and "Zemindar" in other cases (Aitchison, Vol. I, 4th Edition, page 444) This shows that in the case of Kanker, Raigarh, Sarangarh, and Sakti, and in the case of Bastar (Aitchison, Vol I, 4th Edition, page 444) their own ancient and hereditary title had survived the errors and misconceptions of the early years of political relations with the British Government As regards the other Chiefs of the Nagpur Group (1) the British Government found them actually exercising sovereign rights and recognised them as Ruling Chiefs The British Government has conferred on the Chiefs of Loharu, Pataundi and Faridkot the status of Ruling Chiefs as a reward for the services of their predecessors, and similar observations may be made, *inter alia*, in the case of the Ruling Houses of Mysore, R S P, and Jhalawar, who owe their present status and dignity to the British Government (Aitchison's Treaties relating to these States)

APPENDIX "R" (see page 351)

FOREIGN AND POLITICAL DEPARTMENT

Government of India

RESOLUTION

No 427—R

Simla, the 29th October, 1920

The Government of India have had under consideration the question of giving effect to the recommendations contained in paragraph 308 of the Report on Indian Constitutional Reforms, and are pleased to prescribe the following procedure for dealing with cases of the nature therein referred to —

When a dispute arises between the Government of India, or a Local Government and any Indian State, or between two or more Indian States, or where any State is dissatisfied with the ruling or advice of the Government of India or of its local representatives, and it appears that for the proper determination of the case independent advice is

desirable, the Governor-General will at his discretion appoint a Court of Arbitration to enquire into the case.*

The composition of the Court will be determined in each case by the Governor-General, but it will ordinarily include:—

(a) A judicial officer not lower in rank than a Judge of a Chartered High Court of Judicature in British India.

(b) One nominee of each of the parties concerned.

On the appointment of the Court, the Governor-General will convey to the Court an order of reference stating the matter referred for enquiry.

Each party will be entitled to represent its case to the Court by Counsel or otherwise

The Court, after hearing the parties, will make their recommendations to the Governor-General in a judgment setting forth the subject under enquiry in accordance with the terms of the order of reference and their recommendation as to the decision to be arrived at, and enclosing a copy of the proceedings of the Court, and the documents before the Court

The Court will also recommend in every case by whom and in what proportions the costs of the proceedings, including the appropriate part of the salary of the judicial officer employed (but not including the remuneration of the nominees under sub-clause (b) which will be borne by the respective parties) should be paid, and for this purpose will have power to tax the costs of any party and to determine all questions relating thereto.

The Governor-General after consideration of the recommendations contained in the judgment of the Court, will give his decision upon *the case generally and announce it to the parties.*

Either party, if dissatisfied with the decision of the Governor-General will have such right of appeal to the Secretary of State as is provided for in the rules for the submission of petitions and memorials which are to be addressed to His Majesty the King, Emperor of India, and the Secretary of State for India.

Where the Governor-General has at his discretion refused to appoint a Court of Arbitration, he will inform the party or parties of his reasons for refusal, who will have such right of appeal to the Secretary of State as is provided for in the rules for the submission of petitions and memorials to His Majesty the King-Emperor and Secretary of State.

*(1) By G.R No. 224, 3/5/1926 the following paragraph was added here:—

With the approval of His Majesty's Secretary of State the Government of India have decided that the following addition shall be made to the above paragraph —

"In cases where a Darbar is dissatisfied with the ruling or advice of the [illegible]

APPENDIX "S" (see page 432)

Principles to be Observed during Minority Administrations in Native States

Government of India

FOREIGN AND POLITICAL DEPARTMENT.

Resolution No 1894-I A

Simla, the 27th August, 1917.

The Government of India have for some time past devoted special consideration to the question of the principles which should be observed in connection with the administration of a Native State during a minority. The opinions of certain Ruling Princes and Chiefs and of Political Officers were obtained by the Government of India during Lord Hardinge's Viceroyalty and the question in some of its aspects came under discussion at the Conference of Ruling Princes and Chiefs recently held at Delhi The Governor-General in Council after full consideration of the views elicited, has, with the approval of the Secretary of State, decided that the policy of Government in the matter may appropriately be stated as follows —

The Government of India recognise that they are the trustees and custodians of the rights, interests and traditions of Native States during a minority administration Their general policy is laid down in the following extract from certain orders, which were issued some years ago for the guidance of Political Officers —

> "The Governor-General in Council is opposed to anything like pressure on Darbars to introduce British methods of administration. He prefers that reforms should emanate from the Darbar, and grow up in harmony with the traditions of the State Administrative efficiency is at no time the only or indeed the chief object to be kept in view This should specially be borne in mind by officers charged temporarily with the administration of a State during a minority, whether they are in sole charge, or associated with a State Council They occupy a position of peculiar trust, and should never forget that their primary duty is the *conservation* of the customs of the State Abuses and corruption should be corrected as far as possible, but the general system of administration to which the Chief and the people have become accustomed should be unchanged in all essentials The methods sanctioned by tradition in States are generally well adapted to the needs and relations of the Ruler and people The loyalty of the latter to the former is generally a personal loyalty, which administrative efficiency, if carried out on lines unsuited to local conditions, would lessen or impair"

The Government of India realise that the special conditions of each State require special treatment and will be glad to receive and consider requests by individual Ruling Princes or Chiefs regarding any principles which they may wish to be adopted in the case of their own States or families Due weight will be attached to wishes so expressed

or to any written or verbal instructions left on record but the Government of India on whom the final responsibility rests must reserve to themselves full freedom of action in dealing with such requests or instructions. Subject to the foregoing observations the Governor-General in Council is pleased to lay down the following general principles for the conduct of minority administrations The announcement is subject to the reservation that the principles laid down will be liable to relaxation in individual cases where special conditions may render their strict application inappropriate :—

Principles to be observed during minority administrations

(1) The administration of a State during a minority should ordinarily be entrusted to a Council. In cases where the appointment of a Regent is in accordance with the custom of the State and a suitable person is available for nomination as Regent the Council should be styled a "Council of Regency" and should consist of three to five Indian Members under the presidency of the Regent The Regent may be either a legitimate mother or widow or a near male relative of the late Ruler, provided that the latter was in the full confidence of the late Ruler, at the time of his demise Where no Regent is available, the Council should be styled a "Council of Administration" and should consist of three to five Indian Members presided over by an Indian administrator of proved experience of Indian States

In the selection of the Councillors, local talent should be utilized to the utmost possible extent—preference being always given to persons with vested interests in the State so long as they possess the requisite qualifications.

Where local conditions appear to render it impossible for a Council to administer the State successfully, an officer borrowed from Government service may be appointed as Superintendent or Administrator of the State

Where expressly desired by the late Ruler the minority administration should in important matters consult with Ruling Princes or Chiefs nominated by him for this purpose.

(2) Old traditions and customs of the State should be scrupulously observed and maintained.

(The word "customs" includes among other things:—

(a) the payment to the Minor Prince or Chief and to members of his family, on all occasions, of due consideration by all officers serving in the State;

(b) the maintenance of the dignity of the minor Prince or Chief by the strict observance of the customary ceremonial honours and courtesies due to him by officers of the Imperial Government and by other Rulers: and

(c) the performance on due date of religious ceremonies, festivals, and social observances, including the exchange of presents with other States).

(3) The regulations and records embodying the established policy of the State should be carefully studied. Except in the case of obvious and unmistakeable abuses, radical changes (such as important constitutional reforms, alteration of the Court language or of the postal,

taxation, or currency systems, etc.,) should, as a general rule, be avoided. Any new measures adopted should, so far as circumstances permit, be grafted on and assimilated to existing institutions in the State, and should be so designed, introduced and carried into effect, that they can be continued by the regular administration after the termination of the minority. Where any radical change, or any important measure, which is contrary to the express wishes or policy of the late Ruler, is proposed, the matter should be referred with full particulars to the Government of India for decision

(4) For appointments in the State service local talent should be used wherever possible. Where local talent is not available, outsiders may be imported for special purposes, but these should be strictly required to conform to local conditions and customs and to show due respect to the members of the Ruling family. When the services of outsiders are engaged, their deputation should ordinarily be liable to termination at the discretion of the Ruler after he receives his powers. Persons who are known to have been disloyal or obnoxious to the late Ruler or his family should not be appointed to State service during a minority.

(5) Treaty rights should be strictly upheld and measures involving any modification of existing treaties and engagements should be avoided. No alteration should be made affecting the recognised political status of fiefs under the suzerainty of a Darbar or their customary relations with the Ruler and his State

(6) *No jagirs or hereditary or personal honours and distinctions* should be granted or promised on behalf of the State during the minority, nor should such jagirs, honours, etc , be confiscated except for disloyalty or gross misconduct Customary jagirs, and maintenance allowances granted by the late Ruler to members of the Ruling family and others should ordinarily be maintained, and no increase or decrease or new grant should be allowed except for special reasons and with the sanction of the Government of India or other political authority to whom this power may be delegated such sanction would apply only to the period of the minority

(7) Interference with the private property, estates or establishments of members of the Ruling family should be avoided and the customary and reasonable presents, easements, etc , to them and their dependents, should not ordinarily be curtailed

(8) In States where a distinction is made between State and Privy Purse funds, the fixed Privy Purse allowance, if on a reasonable scale, should be paid by the State without reduction to the minor Ruler and kept in trust for him, together with the private property bequeathed to him by the late Ruler until he attains majority Expenditure from Privy Purse funds should be limited to the usual and customary items of expenditure

(9) The sale of State jewellery during a minority should ordinarily be avoided If such is found absolutely necessary to meet debts, great care should be taken in the selection of the articles to be sold and the wishes of members of the Ruler's family should be consulted and respected Proposals for such sales should be referred to Government and their sanction obtained before the proposal is carried out

(10) No State territory or other immovable property should be exchanged, ceded, or sold during a minority.

(11) No permanent rights or privileges should be granted by the minority administration to jagirdars, officials or subjects of the State.

(12) No permanent or long-term commercial concessions or monopolies should ordinarily be granted to individuals or companies It should, however, be borne in mind that neither individuals nor companies would be willing to sink any considerable capital sum in undertakings for short periods, and in each case, therefore, the rule must be applied cautiously with regard to the best interests of the State concerned, in order that the development of important and valuable industries may not be hindered

(13) Expenditure on new palaces intended for a Ruler's own use should be avoided. Outlay on public works generally should be undertaken with due regard to economy and limited to necessary works. The expenditure should be so regulated as to come within the ordinary income of the year and to leave a substantial annual balance. Expenditure from surplus and reserve funds should be limited to really productive or protective works and should not be undertaken without careful examination and expert advice

(14) Communication with the ladies of the palace should be conducted according to the custom of the State. Palace arrangements existing in the time of the late Ruler should not ordinarily be altered, and nothing should be done contrary to zenana etiquette and custom

(15) The education and training of the young Ruler should be conducted on the lines laid down in the report [*vide* Appendix attached] of the Committee convened to consider the matter. As a general rule it is preferable that he should receive his education in India rather than in Europe.

(16) Care should be taken to maintain shooting preserves and the existing establishment for their maintenance, where such exists. Shooting rules and restrictions observed in the time of the late Ruler should be strictly enforced

(17) The Political Officer is answerable to the Government of India for the maintenance of these principles. The degree of supervision to be exercised by him will depend on the circumstances of each particular case.

Ordered that the Resolution be communicated to all Local Governments and Administrations [omitting Burma, North-west Frontier Province, Baluchistan and Nepal] and to Political Officers in India, for information and guidance.

(Sd) J. B Wood.

Political Secretary to the Government of India.

APPENDIX "T" (*See* page 457.)

NOTE BY SIR LESLIE SCOTT UPON THE SANADS IN AITCHISON RELATING TO THE SIMLA HILL STATES.

Year.	Aitchison Vol. VIII.	State	Obligation to make roads	Obligation to maintain roads
1815 ..	317	Sirmur..	Yes . ..	No.
1815 .	319	Be'aspur	No	No
1847 .	322	"	Yes ...	Repair when necessary
1815	323	Nalagarh (Hindoor)	No . ..	No.
1815..	324	" (Burowlee)	Yes (no width)	No
1816...	326	Bashahr ..	Yes ..	No
1815 .	331	Keonthal	No	No
1823 ..	336	"	Yes . .	No.
1815 ..	336	Baghul ...	No ..	No
1815 .	337	Baghat	No .	No
1815	339	Jubbal	No	No
1816..	341	Khumarsain	Yes .	No
1815 ..	342	Kothar.. . .	Yes .	No
1815 .	344	Balsan	Yes .	No
1815 .	345	Mailog	No	Keep up
1815 .	345	Bija .. .	Yes ..	No
1819	346	Taroch	Yes	No
1843..	348	" .	No .	No (Look to security)
1815...	349	Kunhiar . .	Yes	No
1815...	350	Sangri	Yes	No.
1815..	350	Mangal ..	Yes (Supply begarees for construction)	No
1815	351	Darkoti	No	No

APPENDIX "U" (*See* page 458)

EXTRACT FROM APPENDIX D, CXXVII, *et seq.*, OF A MEMOIR OF THE SOUTHERN MARATHA COUNTRY, BY CAPTAIN EDWARD W WEST, BOMBAY STAFF CORPS, AND ASSISTANT TO POLITICAL AGENT KOLAPORE AND SOUTHERN MARATHA COUNTRY, PUBLISHED IN 1869, IN SELECTIONS FROM THE RECORDS OF BOMBAY GOVERNMENT No CXIII (N S)

Agreement entered into with Sangli the 25th January, 1820 *in substitution for XCVI* supra

Engagement concluded by the Hon East India Co with Azum Chintamon Row Appa Putwurdhun regarding the territory continued to him by the Government of the Shreemunt Row Pundit Prudhan (Peshwa) as surinjam for the maintenance of troops, personal expenses, and other purposes

Dated Soorsun Ashreen Muya Tain Wa Aluf, corresponding with 25th January, 1820 (See note at end.)

Article I

In the year 1812-13 articles of agreement were entered into at Pundhurpoor on the part of the Company's Government and a

memorandum and letter were sent. In the 3rd para. of the memorandum it is provided that you shall render military service to the Shreemunt (Peshwa) to the extent to which it was performed from ancient times under the Swaraj, and which extent is to be ascertained from the "tainat zabta" According to this it has now been decided that you should supply 450 horse, being a fourth of the number for which your surinjam territories are continued to you, or, in lieu of them, pay to the Company's Government, in cash, the amount of money which may be due on account of their tainat, at the rate of Rs. 300 per horse, as stated in the "tainat zabta" or assign territory for the payment of the amount. Pursuant to this you have agreed to assign territory in lieu of the pay of the above number of horse, *and you are therefore required to make over to Government territory yielding the full amount according to the deed of relinquishment given in by you*

Article II

As long as you act with fidelity and attachment, the Jagheer in your possession and in the possession of the sirdars of your family shall be continued without any interruption or question. This is mentioned in the 5th para of the agreement entered into at Pundhurpoor, and it is accordingly now confirmed On this subject you will receive a sunnud issued by the Rt. Hon. the Governor-General of India. *It will hereafter be necessary for your descendants to obtain new sunnuds from generation to generation, on which occasions applications should be made to Government, which will be pleased to issue a sunnud, and to continue the jagheer without levying a nuzur.*

Article III.

Without Government orders you are on no account to collect men and have an engagement with any person Should any dispute arise among yourselves, you are, without having recourse to arms, to bring it to the notice of Government for settlement, and you are to abide by the just settlement which will be made by Government. To this effect the 4th para of the articles of agreement entered into at Pundhurpoor is written, and this provision is hereby confirmed.

Article IV.

You should keep the ryots of your jagheer territory in a prosperous state, should dispense justice properly, and should adopt proper measures regarding robbers, murderers, tuleegars, etc. This engagement is binding on you in respect to the provisions of this article. You must therefore, without fail, make arrangements for the proper government of your territory

Article V.

Should there be in your jagheer territory any Government "umul", dumalla, surunjamee, and inamee villages, land, wurshasuns, dhurmadas, dewustans, razeenas, kuryats, nemnooks, etc, which may have been continued from former times, you are to continue them

without interruption to the respective incumbents. You are also to continue such items as may have the sanction of Government but may have in the meantime been interrupted. You shall afford no cause for any complaints being made to Government regarding them

Article VI

If any offenders of the talooka of your jagheer take refuge in the Government talooka, you are to make any intimation of it, when, after an enquiry, they will be made over to you. If offenders, etc., of the Government territories should repair to your territory, you are to assist the Government people who may be despatched to make enquiries regarding them, and to make them over to the Government people

Article VII.

The Company's Government *shall continue your dignity and rank in the same manner as they were continued* in former times by the Peshwa's Government If you have anything, you may bring it to the notice of Government · it will be listened to, and what may be proper will be done *You will not be molested on any account you will be assisted in just cases*

Article VIII

Your surinjam villages, inam lands, etc , which may be situated in the Government territories shall be continued as hitherto without any interruption

The above eight (8) Articles are substituted in lieu of those formerly entered into at Dharwar, which are cancelled

(Sgd) W CHAPLIN.

(True version)

(Sgd) G S A ANDERSON,
Assistant Political Agent, S M C

NOTE 1 —The Treaty is printed at page cxxvii of West as of the 25th January, 1826 · this should be 1820, see page 45 of West, and Evidence before Indian States Committee, 1928 (pages 1286 7)

NOTE 2 —This Treaty repeated the whole of the Treaty of 15th May, 1819, except for the passages printed in *italics* which were new

APPENDIX "V." (*See* page 469.)

In the Statement below 74 States are shewn. Treaties with these States began from the year 1799, and covered a period up to 1848. It is significant that the restriction as to the employment of Europeans occurs in the Treaties with seven States out of the 74 Of these seven one is Nepal which now stands in a class apart (H M. the King of Nepal is an independent sovereign). There remain six States. The position in regard to these must be analysed. They fall into two groups of States, namely (*a*) Mysore, 1799, Gwalior (Scindia), 1803, Datia, 1804, Indore (Holkar), 1805, and (*b*) Orcha, 1812, Nepal, 1816, Samthar 1817. History supplies the key. The years 1803 and 1804 were the years of Lord Lake's wars, and the years 1814-1817 were the years on the one hand of the Nepal War, and on the other of the Pindari menace. Lord Lake, in trying conclusions with Scindia and Holkar in 1804 and 1805, had a difficult time, because the armies of these two powerful rulers were commanded by French and other European generals (in the case of Scindia by De Boigne, Perron, Jean Baptiste, etc.). The object of this provision in the Treaties of that period was to exclude the possibility of European foreigners in the service of these Durbars rising to influential rank in their Armies Where such European assistance had not been invoked—as for the smaller Armies of the other 67 States—a provision is not to be found.

Further, it is to be remembered that at that period it was all that the British Government could do to maintain their position, and that there was no question then of the prestige of European nationals, or of any other reason for excluding Europeans from free service under Indian rulers.

To-day, in spite of the absence of any specific provision in the Treaties of the 67 States, the rule of compelling States not to employ Europeans in any capacity, without the sanction of the Government of India, that is of their Political Officers, is universally enforced, but the Standing Committee submit without justification in law or policy.

Similar considerations apply to the issue of civil and criminal jurisdiction over Europeans and Americans, including British subjects

State	Treaty date, Volume and page of Aitchison	If any clause forbidding employment of Europeans without consent	If any cession of jurisdiction over same
Mysore.	July 8, 1799 IX, Page 220	Yes Article 7	No But this Article says he will hand over to Government any European foreigner found in State without regular Passport.
Baroda	June 6, 1802 VIII, Page 33	No.	No
Bansda	December 31 1802 VI, Page 52	Bansda is made Tributary to the Peshwa by this Treaty of Bassein	
Pudukkottai	July 8, 1803 X., Page [illegible]	No	No

State.	Treaty date; Volume and page of Aitchison.	If any clause forbidding employment of Europeans without consent	If any cession of jurisdiction over same.
Bharatpur.	October 22, 1803 III., Page 274	No. But 4th May 1805 (page 275) Article 8. Yes.	No.
Alwar.	November 14, 1803 III, Page 322	No.	No
Gunth.	December 15, 1803 VI., Page 368.	No (Tributary alliance)	No
Bariya	VI, Page 328	(The Treaty of 1803 is with Gwalior and entitles Bariya to protection)	
Gwalior	December 30, 1803 IV, Page 42.	Yes Article 13	No.
Datia	March 15, 1804 V., Page 87.	Yes Article 6.	No But Article 1 says will apprehend any defaulters from British Government found in his territory
Charkhari	July 29, 1804 V, Page 126	No	No
Indore (Holkar)	December 24, 1805 IV, Page 194.	Yes Article 6	No
Chhatarpur	April 4, 1806 V., Page 174.	No.	No But Article 2 says he will seize and deliver up any defaulter
Maihar	November 18, 1806 V, Page 260	No	No
Baoni	December 24, 1806 V Page 216	No	No
Panna	February 4, 1807. V, Page 108	No	No But Article 5 says will deliver up any absconder from British Government
Ajaigarh	June 8 1807 V, Page 147	No	No But Article 8 says will deliver up any absconder from British Government
Kathiawar.	1807 VI, Page 112 *et seq*	Fael Zamin Bonds	Fael Zamin
Nagod	March 11, 1809 V., Page 253	No	No But Article 4 says will deliver up any absconder from British Government
Lahore	April 25, 1809. VIII, Page 144	No	No.
Cis-Sutlej Chiefs	May 3, 1809 VIII, Page 196	No	No
Lower Sind	August 22, 1809 VII, Page 351	No	No
Bijawar	March 26, 1811 V, Page 141	No	No But Article 3 says will deliver up any refugee from British Government
Mahi Kantha	1812 VI, Page 286	No	No

State	Treaty date, Volume and page of Aitchison.	If any clause forbidding employment of Europeans without consent.	If any cession of jurisdiction over same
Sawantwari	1812 VII., Page 304	No.	Yes Over British subjects
Nawanagar	February 23, 1812. VI, Page 179	No.	No
Rewa	October 5, 1812 V., Page 238	No	No
Orcha	December 23, 1812 V, Page 84	Yes. Article 7	No
Radhanpur	December 16, 1813. VI., Page 260	*No*	*No*
Hill States	September 21, 1815 VIII, Page 317.	No	No
Patiala	October 20, 1815 VIII, Page 199	No	No
Kutch	January 14, 1816 VII., Page 15	No	No
Nepal	March 4, 1816 II, Page 110	Yes Article 7	No
Sikkim	February 10, 1817 II, Page 322	No. But Article 5 says will allow no British subject, European, &c., to reside within territory without consent	No
Tonk.	November 9, 1817 III., Page 241	No	No
Karauli	November 9, 1817 III, Page 284	No	No (Article 3 says British jurisdiction shall not be introduced)
Samthar	November 12, 1817 V., Page 101	Yes Article 8	No But will hand over defaulters (Article 10)
Palanpur.	November 28, 1817 VI, Page 246	No	No
Bhopal.	December 23, 1817 IV., Page 295.	No	No
Kotah	December 26, 1817. III, Page 368	No.	No And Article 10 says the Civil and Criminal jurisdiction of British Government shall not be introduced.
Tributary *Chiefs of* Chota-Nagpore	1817-1825 I, *Page 367*	No *(These are engagements of submission)*	No
Jaora	January 6, 1818 IV, Page 197	No (This is the Treaty of Mandsaur with Holkar)	No
Jodhpur	January 6, 1818 III., Page 159	No (But Lee Warner says this dissolves 1803 Treaty which did)	No. And says British jurisdiction shall not be introduced in territory.
Udaipur	January 13 1818 III, Page 30	No	No. and ditto
Bundi.	February 10, 1818 III., Page 233	No	No. And Article 3 says British jurisdiction shall not be introduced in territory.

State	Treaty date; Volume and date of Aitchison.	If any clause forbidding employment of Europeons without consent	If any cession of jurisdiction over same.
Bikanir.	March 9, 1818. III, Page 313	No	No. And Article 9 says British jurisdiction shall not be introduced in territory
Kishengarh	March 26, 1818 III, Page 128	No	No. And Article 7 says British jurisdiction shall not be introduced in territory
Jaipur.	April 2, 1818. III., Page 104.	No	No And Article 8 says British jurisdiction shall not be introduced in territory
Partabgarh.	October 5, 1818 III., Page 82	No	No
Ali Rajpur.	December 8, 1818 IV, Page 488	No	No
Dungarpur.	December 11 1818. III., Page 55	No	No And Article 4 says British jurisdiction (Civil and Criminal) not to be introduced
Dewas.	December 12, 1818. IV, Page 252.	No	No
Jaisalmir.	December 12, 1818 III, Page 201	No	No
Banswara	December 25, 1818 III, Page 67	No	No And Article 4 says Civil and Criminal jurisdiction shall not be introduced
Ratlam	January 5, 1819 IV, Page 409	No	No
Sailana	Do	No	No
Sitamau.	Do	No	No
Dhar	January 10, 1819 IV., Page 468	No	No
Satara	September 25, 1819. VII, *Page 440*	No	No
Tehri-Garhwal	March 4, 1820 I, Page 34	No	No
Jhabua	August 22, 1821 IV, Page 487	No	No
Rajpipla	October 11, 1821 VI, Page 345	No (But generally says will act on advice of the Company "*Whatever may be the desire of the* Government I will act according to it")	No
Chhota Udaipur	November 21, 1822 VI, Page 354	No	No
Sirohi	September 11, 1823 III, Page 210	No	No Article 4 says jurisdiction of British Government shall not be introduced
Ara	February 21, 1826 II, Page 33	No	No

State	Treaty date, Volume and page of Aitchson	If any clause forbidding employment of Europeans without consent.	If any cession of jurisdiction over same
Mayurbhanj and other Tributary Mahals of Orissa	June 1, 1829 I, Page 348	No	No.
Khairpur	April 4, 1832 VII, Page 353	No.	No.
Bahawalpur	February 2, 1833. VIII, Page 402.	No.	No.
Jhalawar	April 8, 1838 III, Page 393	No.	No. And Article 9 says Civil and Criminal British jurisdiction not to be introduced
Kashmir.	March 16, 1846 XI., Page 264	No.	No
Trans-Sutlej States	October 24, 1846 VIII, Page 363	No (This is the Treaty with Mandi.)	No
Patiala.	September 22, 1847. VIII, Page 200	No	No
Jind	September 22, 1847. VIII, Page 262	No	No
Shahpura.	June 27, 1848 III, Page 256	No.	No

APPENDIX "W." (*See* page 644)

(*See* page 644)

NOTE ON HEAD A (*a*) XIII AND LEE-WARNER'S STATEMENT ON PAGE 268 OF HIS BOOK—"THE NATIVE STATES OF INDIA"

Employment of Europeans

State	Treaty date, Volume and page of Aitchison	Extract from Treaty.	Remarks.
Oudh	21 5 1775 I, page 97	Art 2.—The aforesaid Nabob engages never to entertain or receive in his dominions Cossim Ally Cawn, the former Soubahdar of Bengal, and Sumro, the murderer of the English; even in case of his getting them into *his hands, he will, out of* friendship, make them prisoners, and deliver them to the English Company. He also engages not, for any cause or under any pretence, to entertain	On succession of new Ruler. All these vetoes on the employment of Europeans arose out of the menace to the British position from French influence beginning with the Seven Years' War. See Aitchison IX, *pages 1 and 3* In 1759 the Treaty of Masulipatam was made with Hyderabad whereby the Nizam agreed to dismiss the French troops and get them out of the Deccan After the

State	Treaty date: Volume and page of Aitchison	Extract from Treaty.	Remarks
Oudh—*cont.*		Europeans of any nation in his service, without the consent of the English Company That he will prevent oppose and send back such as offer to come into pass through or remain or shall be in his dominions without the perwannah of the English Company The Europeans of every nation in the service of the said Nabob are hereby dismissed and now and in the future he engages never to entertain the said Europeans and to deliver up to the English Company such of their servants who have deserted or may desert, in case of his apprehending them	defeat of Buxar in 1764 Oudh was set up again as a buffer against the Marathas by the Treaty of 1765 (Aitchison I, page 77). In 1774 (Aitchison IX, page 3) the Nizam was ordered to dismiss the French troops re-collected by Basalut Jung
	21 2 1798 I page 118	(by which the Company undertook to protect Oudh, and the Nabob undertook to pay for a subsidiary force, and to carry on all correspondence with any foreign powers or State with the knowledge and concurrence of the Company)	On succession of new Ruler. Beginning of the paramountcy aspect
		Art 15 —The Nabob Saadet Ali Khan engages and promises that he will not entertain any Europeans of any description in his service, nor allow any to settle in his country without the consent of the Company.	
Mysore	8 7 1799 IX, page 220.	Art 7 —His Highness stipulates and agrees that he will not admit any European foreigners into his service without the concurrence of the English Company Bahadoor; and that he will apprehend and deliver up to the Company's government all Europeans of whatever description who shall be found within the territories of His said Highness without regular passports from	Re-created after defeat The fear of the French was the main motive.

State	Treaty date: Volume and page of Aitchison	Extract from Treaty.	Remarks.
Mysore—*cont*		the Company's Government, it being His Highness's determined resolution not to suffer, even for a day, any European foreigner to remain within the territories now subjected to his authority, unless by consent of the said Company.	
Peshwa	31 12 1802 VI, page 52	Art 11 —Whereas it has been usual for His Highness Rao Pundit Purdhani Behauder to enlist and retain in his service Europeans of different countries, His said Highness hereby agrees and stipulates, that in the event of war breaking out between the English and any European nation, and of discovery being made that any European or Europeans in his service, belonging to such nation at war with the English, shall have meditated injury towards the English, or have entered into intrigues hostile to their interest, such European or Europeans, so offending, shall be discharged by His said Highness, and not suffered to reside in his dominions	Fear of the French
Dholpur.	16.12 1803 III, page 292	Art. 4.—Rajah Umbajee shall not entertain in his service or in any manner give admission to any English or French subjects, or any other person from among the inhabitants of Europe, without the consent of the British Government.	Both these Treaties were made for military purposes in a period either of active military operations, or of great disturbance When the Fort of Gwalior, which had been in the possession of Dholpur, was handed over to Sindhia, and a Treaty made with him on 22nd November, 1805, the military dangers seemed to be disposed of and made it possible to conclude the Treaty of 19th December, 1805, with Dholpur, cancelling the previous Treaties and with it the Article. See Aitchison, III, pages 269-70
	17.1 1804 III, page 296	Art 9 —Maharaj Ranah shall not entertain in his service, or in any manner give admission to any English or French subjects, or any other persons from amongst the inhabitants of Europe, without the consent of the British Government	

State.	Treaty date; Volume and page of Aitchison.	Extract from Treaty	Remarks
Nagpur.	17.12.1803 I, page 416	Art 8.—Senah Saheb Soubah engages never to take or retain in his service any Frenchmen, or the subject of any other European or American Power, the Government of which may be at war with the British Government, or any British subject, whether European or Indian, without the consent of the British Government The Honourable Company engage on their part, that they will not give aid or countenance to any discontented relations, Rajahs, Zemindars, or other subjects of Senah Saheb Soubah who may fly from or rebel against his authority	Treaty of Deogaum. France mentioned by name.
Gwalior	30.12.1803 IV, page 42	Art 13.—The Maharaja Ali Jah Dowlut Rao Sindia engages never to take or retain in his service any Frenchman, or the subject of any other European or American power, the Government of which may be at war with the British Government, or any British subject whether European or native of India without the consent of the British Government	Consequential on the Treaty of Bassein
Jhansi.	6.2.1804 V, page 64	Art 5.—Sheo Rao Bhao engages never to take or retain in his service any British subject or European of any nation or description without the consent of the British Government	Jhansi was a feudatory of the Peshwa see his *Wanb-oul Urz* (statement of points to be represented) 18.11.1803 (Aitchison V, page 66) stating his position under the Peshwa Fourth Point: "If the Honourable Company be desirous of possessing my country and fort, they are masters and every way powerful and I am ready to submit, but as the British Nation and His Highness the Peishwa are at peace, and as a Treaty exists between them, let an

State	Treaty date; Volume and page of Aitchison.	Extract from Treaty	Remarks
Jhansi—*cont*			order of His Highness be produced, that I may perform the duty of allegiance in obeying that order" This shows that the Jhansi Treaty was the natural consequence of the Treaty of *Bassein, and represented* the same policy as led to the Treaty with Gwalior.
Datia	15 3 1804. V, page 87.	Art 6—The Rajah engages never to entertain in his service any British subject or European of any nation or description whatever, without the consent of the British Government.	Similar circumstances as Jhansi.
Bharatpur	17 4 1805 III, page 275	Art 8.—The Maharaja shall not in future entertain in his service, nor give admission to any English or French subjects, or any other person from among the inhabitants of Europe, *without the* sanction of the Honourable Company's Government; and the Honourable Company also agrees not to give admission to any of *the Maharaja's relations* or servants without his consent.	Holkar had been *sheltering* in the Fort of Bharatpur and the Treaty was dictated after the British victory
Indore	24 12 1805 IV, page 194	Art. 6—Jeswunt Rao Holkar engages never to entertain in his service Europeans of any description, whether British subjects or others, without the consent of the British Government.	See Aitchison VI, page 7 "The campaigns against the Maratha Chiefs in 1803 and Holkar in 1805 . . . established once for *all the supremacy* of the British Power in India."
Orcha	23 12 1812. V, page 84	*Art 7.—The Rajah* engages never to entertain in his service any British subject or Europeans of any nation or description whatever, without the consent of the British Government.	The only State in Bundelkhand not held in subjection to the Peishwa (Aitchison V, page 9), it is in the extreme West of Bundelkhand—the Chiefs there "being treated as independent" (Aitchison V, page 5) The same clause as Datia of 1804

State	Treaty Date, Volume and page of Aitchison.	Extract from Treaty	Remarks
Nepal	2.12.1815 II, page 110	Art 7.—The Rajah of Nipal hereby engages never to take or retain in his service any British subject, nor the subject of any European and American State, without the consent of the British Government	After defeat in war.
Sikkim	10.2.1817 II page 322.	Art 5.—That he will not permit any British subject, nor the subject of any European and American State, to reside within his dominions without the permission of the British Government	Upon restoration by the British after the country had been over-run by Nepal (Aitchison II, page 311)
Peshwa	5.7.1817, VI, page 64	Art 3.—By the 11th Article of the Treaty of Bassein, His Highness Rao Pundit Purdham Behauder engages to dismiss all Europeans, Natives of States at war with Great Britain, who shall meditate injury towards the English His Highness now engages never to admit into his territories any subject of any European or American power whatever without the previous consent of the British Government	This was a dictated Treaty after the discovery of the Peshwa's intention again to attack, the Article is the complement of Article 11 of the Treaty of Bassein
Samthar	12.10.1817 V, page 101	Art 8 The Rajah engages never to entertain in his service any British subject or European of any nation or description whatever, without the consent of the British Government	Another Bundelkhand State originally part of Datia (Aitchison V, page 13) The same clause as Datia Treaty of 1804

After this the veto was not repeated till the Lahore Treaty of 1846 when it was imposed on Ranjit Singh (9th March, Aitchison VIII, p. 160) after he had been defeated in the Sikh War, and that is the last time it appears

APPENDIX "X." (*See* page 661.)

Recreated States.

In order to avoid confusion of thought it is essential to keep clearly in mind those States which have been recreated by the British Government, or otherwise originated in a new grant from the British Government. Chief among them are.—Mysore, Satara, Rajpipla, Coorg, Benares, Tonk, Jhalawar, Oudh and Garhwal. Where the British Government chose to grant powers of sovereignty to a new State, either by way of fresh creation, or by the revival of an anterior State that had lapsed to, or been annexed by, the Crown, it was obviously open to the Crown to give as much or as little sovereignty or independence as it chose. In certain of these cases, such as Mysore in 1799 and again in 1881, and Satara in 1819, the Government imposed upon the recreated State the contractual condition that it should be guided by the Government even on the details of its internal administration It is obvious that such a right of interference is individual to those particular States and justifies no general inference that the Paramount Power has any similar right of control over other States

Mysore The Mysore clauses were as follows:—

Treaty of 1799 (Aitchison, Vol. IX, page 220).

Art 4 " . . . . whenever the G.G.I.C. of Fort William in Bengal shall have reason to apprehend such failure in the funds so destined, the said G G I.C shall be at liberty, and shall have full power and right either to introduce such regulations and ordinances as he shall deem expedient for the internal management and collection of the revenues, or for the better ordering of any other branch and department of the Government of Mysore, or to assume and bring under the direct management of the servants of the Company Bahadoor such part or parts of the territorial possessions of H.H. Maharajah Mysore Kishna Rajah Oodiaver Bahadoor, as shall appear to him, the said G G I C, necessary to render the said funds efficient and available, either in time of peace or war."

Art 14: "H.H Maharajah of Mysore Kishna Rajah Oodiaver Bahadoor hereby promises to pay at all times the utmost attention to such advice as the Company's Government shall occasionally judge it necessary to offer to him, with a view to the economy of his finances, the better collection of his revenues, the administration of justice, the extension of commerce, the encouragement of trade, agriculture and industry, or any other objects connected with the advancement of His Highness's interests, the happiness of his people and the mutual welfare of both States."

The Treaty of 1881. (Aitchison, Vol. IX, page 231)

Art. 2. "The said Maharaja Chamrajendra Wadiar Bahadur and those who succeed him in manner hereinafter provided shall be entitled to hold possession of, and administer, the said territories as long as he and they fulfil the conditions hereinafter prescribed"

Art 20· "No material change in the system of administration, as established when the Maharaja Chamrajendra Wadiar Bahadur is placed in possession of the territories, shall be made without the consent of the G G I.C"

Art. 22: "The Maharaja of Mysore shall at all times conform to such advice as the G.G.I.C. may offer him with a view to the management of his finances, the settlement and collection of his revenues, the imposition of taxes, the administration of justice, the extension of commerce, the encouragement of trade, agriculture and industry, and any other objects connected with the advancement of H.H.'s interests, the happiness of his subjects and his relations to the British Government."

Art. 23: "In the event of a breach or non-observance by the Maharaja of Mysore of any of the foregoing conditions, the G.G I.C may resume possession of the said territories and assume the direct administration thereof, or make such other arrangements as he may think necessary to provide adequately for the good government of the people of Mysore, or for the security of British rights and interests within the province."

Art. 24: "This document shall supersede all other documents by which the position of the British Government with reference to the said territories has been formally recorded And if any question arise as to whether any of the above conditions has been faithfully performed, or as to whether any person is entitled to succeed, or is fit to succeed, to the administration of the said territories, the decision thereon of the G.G I C shall be final"

Oudh The Oudh clauses are as follows —

Treaty of 1837. (Aitchison, Vol I, page 162) (Lee-Warner 149).

Art. 7 "In modification of Art 6 of the Treaty above referred to (1801), it is hereby provided that the King of Oude will take into his immediate and earnest consideration, in consent with the British Resident, the best means of remedying the existing defects in the Police, and in the Judicial and Revenue Administrations of his dominions, and that if His Majesty should neglect to attend to the advice and counsel of the British Government or its local representative, and if (which God forbid) gross and systematic oppression, anarchy and misrule should hereafter at any time prevail within the Oude dominions, such as seriously to endanger the public tranquility, the British Government reserves to itself the right of appointing its own officers to the management of whatsoever portions of the Oude territory, either to a small or to a great extent, in which such misrule as that above alluded to may have occurred, for so long a period as it may deem necessary, the surplus receipts in such case, after defraying all charges, to be paid into the King's treasury, and a true and faithful account rendered to His Majesty of the receipts and expenditure of the territories so assumed"

Art 8. "And it is hereby further agreed that in case the G G I C should be compelled to resort to the exercise of the authority vested in him by Art 7 of this Treaty, he will endeavour, as far as possible, to maintain (with such improvements as they may admit of) the native institutions and forms of administration within the assumed territories, so as to facilitate the restoration of those territories to the Sovereign of Oude when the proper period for such restoration shall arrive"

Aitchison, Vol. I, page 83 on above Treaty:

"The assent of the King was most reluctantly given to this treaty. The Home Government therefore disallowed it, and directed the restoration of the relations with Oudh to the footing on which they had previously stood."

Nagpur. Treaty of 6th Jan. 1818. (Aitchison, Vol. I, page 424). Signed after Appa Sahib had rebelled and been defeated (Aitchison, Vol. I, page 385).

Art. 1: "The Rajah retains his Musnud until the pleasure of the Governor-General is known on the following conditions."

Art. 3: "The affairs of the Government, Civil and Military, shall be settled and conducted by Ministers in the confidence of the British Government according to the advice of the Resident, and H.H. with his family will reside in his palace in the City of Nagpore under the protection of British troops."

From June 1818 to 1826 a Minority. Treaty of 1826, conferring the State on Raghaji. (Aitchison, Vol. I, page 425).

(Preamble) " . . . and whereas during the subsistence of that Treaty (27th May 1816,) in full force, in violation of public faith and of the law of nations, an attack was made by Rajah Moodhajee Bhooslah on the British Resident and the troops of his ally stationed at Nagpore for the said Rajah's protection, thereby dissolving the said Treaty, annulling the relations of peace and amity between the two States, placing the State of Nagpore at the mercy of the British Government, and the Maharajah's Musnud at its disposal; and whereas the British Government, still recollecting the former close alliance, consented to restore the relations of amity and friendship and replace H.H. on the Musnud; and whereas in utter forgetfulness of this lenity, and in disregard of every principle of faith and honour Appah Sahib entered into fresh concert with the enemies of the British Government, that Government was consequently compelled to remove him from the Musnud; and Maharajah Raghojee Bhooslah having succeeded to the same by the favour of the said Government, the following Treaty is concluded between the States"

Art. 10: "In the management of the country transferred to the Rajah's immediate authority by the preceding Article, and in that of the excepted districts when restored to H.H.'s control, Rajah Raghojee Bhooslah hereby promises to pay at all times the utmost attention to such advice as the British Government shall judge it necessary to offer him with a view to the economy of his finances, the better collection of his revenue, the administration of justice and police, the extension of commerce, the encouragement of trade, agriculture and industry, or any other objects connected with the advancement of H.H.'s interests, the happiness of his people and the mutual welfare of both States, and always to conduct the affairs of his Government by the hands of Ministers in the confidence of the British Government, and responsible to it as well as to H.H. in the exercise of their duties in every branch of the administration. H.H. specifically agrees to adopt such regulations and ordinances as may be suggested by the British Government, through its representative at His Highness' Court, for ensuring order, economy, and integrity in

every department of his Government, and the engagements and settlements which have been or may be concluded with the putels and ryots or others in his name through the intervention of British Agents, shall be faithfully maintained and acted upon. The civil establishments of the Government, the appointment of persons to fill them, and the expenditure on account of those establishments, as well as H H.'s Court and household, shall be fixed and continued according to the advice of the British Government, and the Resident shall be at all times at liberty to inspect and investigate the accounts of the receipts and disbursements of the Government in every branch, as well as to have access to the treasury, in order to be assured of the actual state of the finances "

But Aitchison (Vol I, page 385) says this clause was "acknowledged . . . to be inconsistent with the . . . . intention of British Government to restore the Bhonsla family to the rank and position of one of the substantive powers of India."

Treaty of 26th December, 1829 (Aitchison, Vol I, page 434)

Art. 3 "Arts 10, 12 and 13 of the existing Treaty are hereby cancelled, and the following modified provisions substituted in lieu thereof It shall be competent to the British Government, through its local representative, to offer advice to the Maharajah, his heirs and successors, on all important matters, whether relating to the internal administration of the Nagpore territory or to external concerns, and H.H shall be bound to act in conformity thereto If, which God forbid, gross and systematic oppression, anarchy and misrule should hereafter at any time prevail, in neglect of repeated advice and remonstrance, seriously endangering the public tranquility and placing in jeopardy the stability of the resources when H H discharges his obligations to the Honourable Company, the British Government reserves to itself the right of re-appointing its own officers to the management of such district or districts of the Nagpore territory in His Highness' name, and for so long a period as it may deem necessary, the surplus receipts in such case, after defraying charges, to be paid into the Rajah's treasury "

Garwhal Sunnud 4th March, 1820 (Aitchison, Vol I, page 34)
" And is at all times to conform to the directions of the British Government and its officers "

Satara Treaty of 25th September, 1819 (Aitchison, Vol VII, page 440)

Art 6 "The Rajah shall ultimately have the entire management of the country now ceded to him, but as it is necessary, on account of the recent conquest of the country, that it should at first be governed with particular care and prudence, the administration will for the present remain in the hands of the British Political Agent That officer will, however, conduct the Government in the Rajah's name, and in consultation with H H, and in proportion as H H and his officers shall acquire experience and evince their ability to govern the country, the British Government will gradually transfer the whole administration into their hands He will, however, at all times attend, as above agreed, to the advice which the British Political Agent shall

offer him for the good of his State, and for the maintenance of general tranquility."

Aitchison, Vol VII, page 395. Extract from conditions to be appended to above Treaty. (They were refused and Pratap Singh was deposed in 1839.)

"The Raja for himself and his heirs and successors engages to hold the territory in subordinate co-operation with the British Government and to be guided in all matters by the advice of the British Agent at His Highness' Court."

APPENDIX "Y" (see page 721).

Extract from Minutes of the Board referred to in letter from the Government of Bombay to the Secretary of State, No 19 of 27th March 1861.

"We have no more title to interfere with the right of adoption in the Inchulkurrunjee family than with the right of circumcision in Sacheen . . . I do not at all accept the position which was assumed by the Home Authorities in their despatch No 24 of 1857 that had they sanctioned an adoption in this family, it would have been 'a matter of pure grace and favour.' Such arrogance would render the tenure of every principality in India infinitely less secure than those of Blenheim and Struthfieldsage held by the immediate subjects of the British Government.

We have nothing to do in our position—nothing that is becoming to us—in reference to these Chiefs except that on successions we should reconcile rival claims and interests if we are referred to, check fighting about them if it is likely to affect our own borders, and, whether a domain has developed lineally or by adoption, exterminate its native ownership for ever if after a warning a Chief has persevered in foul tyranny or in disloyalty to the Paramount State."

APPENDIX "Z" (see page 724).

Note by Sir Leslie Scott on the Evidence

Various particular aspects not precisely covered by classification headings, but which afford evidence that:—

(1) *the system is responsible for the evils of which the Princes complain, and not any unfortunate sequence of accidents nor the disabilities or misconduct of individual officers of the Political Department, and*

(2) *that the system is bad in that*

(a) *its tendencies are inevitable;*

(b) *its results must be injurious.*

Political Officers adopt many and various and ingenious devices and excuses to escape the necessity of admitting principles for which the States contend, and of conceding claims which they know are right:—

Kotah (page 1255).
Patiala (page 1263) (concessions made "as a special case").
N.B Rewa (page 1276).

Sometimes they just delay:—

Patiala, June 1924 to date-charas (page 2028).
Kashmir (page 2043)
Patiala (page 1986).
Gwalior Post Offices (pages 2085 and 2090).

They seem, on principle, to avoid admission of defeat in argument:—

(i) by making concession as "a special case" or exception,
(ii) thereafter treating the special or exceptional concession as *importing a recognition of the principle which the State in fact* repudiated

Patiala (page 1263)
Rewa (page 1276).
Cutch (page 1639)
Kotah (page 2128).

Sometimes they give a flat refusal with no reasons at all—particularly when the State's claim is founded on unanswerable reasons, and the revenue stake is large —

Charas cases Kotah (page 2021)
Gwalior Post Offices (page 2091)

Indeed it is hard to understand the opportunism of Government changing its professions of principle to meet the need of the occasion —

Contrast Baghat (page 1996) with Patiala (page 2036), Exhibit R (A G G. Punjab—States to the Foreign Minister, Patiala, No 2 G 885 C, dated 24th August, 1926)

"The rule that taxation should follow consumption is really only a working arrangement ' It cannot be accepted as a principle which should govern the financial relations between the Punjab and an Indian State"

Paramountcy

As to the claims of Government to a right to do certain things in the name of Paramountcy, much light is thrown by making a list of all the powers exercised or claimed by Government but where no consent of the State is disclosed Let me take one or two illustrations

Railways and Tramways —Nawanagar (page 2178) Indore (page 2177)

Postal communications —Patiala (page 2149)

Opium —Cutch (page 1886)

Excise — Baghat (page 1997)

I believe the result of a full list would be remarkable

The truth is there is a tendency, and a growing tendency, for the Government of India and of Political Officers to resort to paramountcy or the prerogative of the Suzerain Power or King-Emperor as source of power or right whenever—

(a) Government and its officers cannot think of any other justification for what they want to do; or

(b) The argument for the State forces them out of the particular legal position they have taken up.

These cases should be referred to:—

Cutch A (a) xi (pages 1335/6) Claim by Government of Bengal to have power to legislate for States in extradition matters, because "the Imperial Power is interested in the repression of crime throughout India"

N B.—Gwalior A (a) xi (pages 1355/6), Exhibit 5

Claims by Government of India to jurisdiction (A (a) ii b).

Salt agents in Kathiawar (page 1851)

Radhanpur (page 1857, Exhibit 4)

Bansda (pages 1859 and 1861)

Cutch (pages 1886, 1889/90)

Gwalior (pages 167/8, Exhibit 17).

Indore (page 2177)—not so stated by Government of India, but it must have been on this ground

Another aspect of Paramountcy is as follows: Let the duty of the Paramount Power to the States be considered in their relations—

(a) with each other,

(b) with their feudatories.

It will be found that arbitrary control is exercised by the Paramount Power over the States—

(a) by partition,

(b) by extinction and merger

Or consider these duties of the Paramount Power—

(a) to hold the scales even between State and State, and act as arbiter where needed.

(b) to preserve the integrity of each State and of its sovereign rights;

(c) to abstain from interference between a State and its feudatory.

In breach of these contractual duties to each and every State, the Paramount Power has—

(i) in some cases interfered between State and feudatory and turned the feudatory into an independent State, e g, Baud

(ii) in other cases deprived an independent State of its existence as a State and merged it in another—Mangrol and Ichalkharanji to-day contend that this is what has been done to them—though it would be improper for me here to express any opinion on their contention.

Where Paramountcy will not serve, the Government of India sometimes looks for its talisman in Prescription, a principle which, in my submission, can in no case have any operation:—

Sirmoor's floatage fees, prescription of user from 1847-1914

Claim by Government of India (? as lower riparian owner) by prescription to whole flow of Jumna (Sirmoor, page 2219).

CONTRACTUAL BASIS—LEGAL RIGHTS.

It is indeed apparent in countless passages of the printed evidence that there underlies all the bad habits of the Government a real recognition by it of the contractual basis of their relationship, and therefore of the necessity of obtaining consent to all infringements. The tragedy of the position is that supposed convenience and expediency so often lead it to the pretext of paramountcy and prerogative and cause it to disregard the fundamentally requisite condition that the State's consent should be real, i e.—

(a) voluntary—State free to refuse, and no pressure,

(b) obtained without misrepresentation,

(c) given by a full-powered Ruler or by persons properly qualified by the constitution of the State to give the consent asked

Only too often the State's consent is obtained by improper methods.—

(1) Misrepresentation of facts,

(2) Threats of untoward results e g, of the displeasure of the Governor-General, of force (e g, laying of rails in Indore—Residency case);

(3) Pressure of various kinds, bribes of honours, and holding out of social and other inducements, Royal favour, &c,

(4) By asserting bad law, alleged paramountcy or prerogative, alleged rules of law and legal power or right vested in Govern ment in Council, alleged obligations of usage and prescription

The following are illustrations —

(1) Misrepresentations

Jodhpur (page 449), about Yusuf ud-Din case and about other States signing prescribed form

Bhor (page 2002), that the cession of jurisdiction in abkari cases was a 'pure formality"

(2) Threats.—

Rewa (Imperial Service Troops)
Rewa, A (a) ix (page 1282)
Gwalior (page 1653)
Bhor (page 1998)
Cutch (page 2041)
Patiala (page 1971)
Gondal (page 2062).

(3) Pressure —

Kotah (page 1678)
Radhanpur (page 1854)
Gwalior (pages 1895 and 1914)
Bansda (pages 1862-5)
Bhor (pages 1998, 2002-3)
Patiala (page 1957)
Kishengarh (page 2016)
Gondal (page 2062)
Gwalior (page 2326)

Bribes and baits

Rewa (Imperial Service Troops)
Kotah (page 1255)

Finally I should like to ask the Committee to put to themselves a question in regard to the great majority of the individual cases contained in the printed volumes—" Was that case calculated to encourage or retard the development of the State—its natural wealth, its revenue, employment of its people, good administration, a sound and respected judicial system and so on?" The answer which the States submit is in the negative.

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